This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

340.8
B476

LELAND·STANFORD·JVNIOR·VNIVERSITY

THE

WORKS

OF

JEREMY BENTHAM,

NOW FIRST COLLECTED;

UNDER THE SUPERINTENDENCE OF HIS EXECUTOR,

JOHN BOWRING.

PART VIII.

CONTAINING

AN ESSAY ON POLITICAL TACTICS;—OR, INQUIRY CONCERNING THE DISCIPLINE AND MODE OF PROCEEDING PROPER TO BE OBSERVED IN POLITICAL ASSEMBLIES.

THE BOOK OF FALLACIES.

ANARCHICAL FALLACIES;—BEING AN EXAMINATION OF THE DECLARATION OF RIGHTS ISSUED DURING THE FRENCH REVOLUTION.

PRINCIPLES OF INTERNATIONAL LAW.

JUNCTIANA PROPOSAL;—PROPOSALS FOR THE JUNCTION OF THE ATLANTIC AND PACIFIC OCEANS, BY MEANS OF A JOINT-STOCK COMPANY.

A PROTEST AGAINST LAW TAXES;—SHOWING THE PECULIAR MISCHIEVOUSNESS OF ALL SUCH IMPOSITIONS AS ADD TO THE EXPENSE OF APPEAL TO JUSTICE.

SUPPLY WITHOUT BURDEN; OR, ESCHEAT *vice* TAXATION: BEING A PROPOSAL FOR A SAVING OF TAXES, BY AN EXTENSION OF THE LAW OF ESCHEAT.

TAX WITH MONOPOLY; EXEMPLIFIED IN THE INSTANCES OF THE STOCK-BROKING AND BANKING BUSINESSES.

EDINBURGH:
WILLIAM TAIT, 78 PRINCE'S STREET;
SIMPKIN, MARSHALL, & CO. LONDON; JOHN CUMMING, DUBLIN.
MDCCCXXXIX.

PART IX.

To be Published on 1st May 1839,

WILL CONTAIN

DEFENCE OF USURY.
MANUAL OF POLITICAL ECONOMY.
A PLAN FOR THE CONVERSION OF STOCK INTO NOTE ANNUITIES.
ON THE RESTRICTIVE AND PROHIBITORY COMMERCIAL SYSTEM.
VIEW OF A COMPLETE CODE OF LAWS.
PANNOMIAL FRAGMENTS.
NOMOGRAPHY; OR, THE ART OF INDITING LAWS.
LOGICAL ARRANGEMENTS.

V. 2
pt. 2

STANFORD LIBRARY

STEREOTYPED AND PRINTED BY STEVENSON AND CO.
THISTLE STREET, EDINBURGH.

AN ESSAY

ON

POLITICAL TACTICS,

OR

INQUIRIES CONCERNING THE DISCIPLINE AND MODE OF PROCEEDING PROPER TO BE OBSERVED

IN

POLITICAL ASSEMBLIES:

PRINCIPALLY APPLIED TO THE PRACTICE OF THE BRITISH PARLIAMENT,

AND TO

THE CONSTITUTION AND SITUATION OF THE NATIONAL ASSEMBLY OF FRANCE.

CONTENTS.

CHAPTER I.

General Considerations.

§ 1. General view of the subject, . . *page* 301
2. Ends that ought to be kept in view in a code of regulations relative to this head, ... 302
3. Of political bodies in general, . . . 306
4. Of permanent bodies, ... ib.
5. Division of the legislative body into two assemblies, ... 307

CHAPTER II.

Of Publicity.

1. Reasons for publicity, ... 310
2. Objections to publicity, ... 312
3. Objects to which publicity ought to extend, ... 314
4. Exceptions to the rule of publicity, . 315
5. Means of publicity, ... ib.
6. State of things in England, ... ib.

CHAPTER III.

Of the Place of Meeting and its Dependencies.

1. Of the building suitable for a numerous assembly, ... 317
2. Table of motions, ... ib.
3. Description of a table of motions, . . 319
4. On a table of regulations, ... 320

CHAPTER IV.

Of what concerns the Members present at a Legislative Assembly.

1. Of the utility of a distinctive dress for members, ... 320
2. Of the manner of placing the members, and of a rostrum for the orators, . . 321
3. Of the hours of business, fixed or free, 322
4. Duty of attendance — mischiefs resulting from non-attendance, ... 323
5. Means of insuring attendance, . . . 324
6. British practice in relation to attendance, ... 325
7. Of the practice of requiring a certain number to form a House, ... 326
8. Visitors — mode of admission, . . . ib.

CHAPTER V.

Of the Presidents and Vice-Presidents belonging to Political Assemblies.

1. Of the office of President — Rules, . . 327
2. Functions, competent and incompetent, 328
3. Sequel — choice, ... 329
4. General observations, ... ib.

CHAPTER VI.

Of the mode of proceeding in a Political Assembly in the formation of its Decisions.

CHAPTER VI.

§ 1. Introductory observations, . *page* 330
2. Principal points to be attended to in the mode of proceeding, ... 334
3. First and second points—Motion written and *in terminis*, ... 335
4. Third point — Unity of the subject of debate kept inviolate, ... 341
5. Fourth point—The process of debating distinct from, and prior to, that of voting, ... 342
6. Fifth point—In debating, no fixed order of pre-audience, ... 346
7. Sixth point—Simultaneity of the votes, 349

CHAPTER VII.

Of the proposal of Measures for adoption, 350

CHAPTER VIII.

Of the different Acts which enter into the formation of a Decree, ... 352

CHAPTER IX.

Of the Promulgation of Motions—of Bills—of Amendments, and their withdrawment, ... 352

CHAPTER X.

Of the drawing up of Laws, . . . 354

CHAPTER XI.

Of Debates.

§ 1. Of the opening of a debate, ... 358
2. Of free and strict debate, ... 359
3. Of three debates upon every proposed law, ... 360
4. Of the exclusion of written discourses, 361
5. Other rules relative to debate, . . . 362
6. Of the election of debaters, ... 364

CHAPTER XII.

Of Amendments, ... 365

CHAPTER XIII.

Of Dilatory Motions, or Motions of Adjournment, ... 366

CHAPTER XIV.

Of Voting.

§ 1. General observations, ... 367
2. Of open and secret voting, ... ib.
3. Of summary and distinct voting, . . 370

CHAPTER XV.

Of Committees.

1. Of special committees, ... 372
2. Of committees of the whole house, . . 373

CHAPTER XVI.

Of Formulas, ... ib.

ESSAY ON POLITICAL TACTICS.*

CHAPTER I.

GENERAL CONSIDERATIONS.

§ 1. *General view of the subject.*

THE word *tactics*, derived from the Greek, and rendered familiar by its application to one branch of the military art, signifies, in general, *the art of setting in order*. It may serve to designate the art of conducting the operations of a political body, as well as the art of directing the evolutions of an army.

Order supposes an *end*. The tactics of political assemblies form the science, therefore, which teaches how to guide them to the end of their institution, by means of the order to be observed in their proceedings.

In this branch of government, as in many others, the end is, so to speak, of a *negative character*. The object is to avoid the inconveniences, to prevent the difficulties, which must result from a large assembly of men being called to deliberate in common. The art of the legislator is limited to the prevention of everything which might prevent the development of their liberty and their intelligence.

The good or evil which an assembly may do depends upon two general causes: — The most palpable and the most powerful is its *composition;* the other is its *method of acting*. The latter of these two causes alone belongs to our subject. The composition of the assembly — the number and the quality of its members—the mode of its election—its relation to the citizens or to the government;—these things all belong to its political constitution.

Upon this great object, I shall confine myself to observing, that the composition of a legislative assembly will be the better in proportion with the greater number of the points of its contact with the nation; that is to say, in proportion as its interest is similar to that of the community.†

In a treatise on tactics, an assembly is supposed to be formed; and the subject under consideration is only the manner in which its operations ought to be conducted.

* This work is now first published in English, being edited from the work of M. Dumont, and the papers of Bentham.

† Four conditions are requisite to inspire a nation with permanent confidence in an assembly which is considered to represent it: — 1. Direct election; 2. Amoveability; 3. Certain conditions for being an elector, or elected; 4. A number proportioned to the extent of the country. It is upon these points that questions of detail multiply.

The election ought to be *direct*. If it be made by more steps, the people, who only elect the electors, cannot regard the deputies elected as their work; they are not connected with them by the affection of choice, nor by the feeling of power. The electors are connected with the people neither by gratitude nor responsibility; there is no approximation of the superior and inferior classes, and the political bond continues imperfect.

Amoveability is absolutely necessary. What is an election? It is a solemn declaration that a certain man actually enjoys the confidence of his constituents. But this declaration does not possess a miraculous virtue, which will guarantee the character and the future actions of this man. It is absurd to cause a whole nation to assert this grave foolery: — "We declare that these five hundred individuals, who now possess our confidence, will equally possess it whatever they do during all the rest of their lives."

The conditions to be required are of a more doubtful nature. Eligibility founded upon pecuniary conditions appears to turn upon a general distrust of individuals who cannot offer the pledge of property: they are considered as less attached to the established order, or less secure from corruption. The conditions required to constitute an elector, have for their object the exclusion from political power of those who are considered incapable of exercising this power with intelligence or probity; — they are precautions against venality, ignorance, and intrigue.

The number is an important consideration: legislative functions demand qualities and virtues which are not common; there is no chance of finding them except in a large assembly of individuals.

Legislation requires a variety of local knowledge, which can only be obtained in a numerous body of deputies chosen from all parts of the empire. It is proper that all interests should be known and discussed.

Legislation is not susceptible of direct responsibility. A small *junta* of legislators may have particular interests in making laws opposed to the general interest. It will be easy for the executive power to subject them to its influence. But *number* is a preservative against this danger. A numerous body of amoveable legislators participate too strongly in the interest of the community to neglect it long. Oppressive laws would press upon themselves. Even the rivalries which are formed in a large assembly become the security of the people.

In conclusion, if the number of the deputies were too small, the extent of the electoral district would render the elections embarrassing; and by reducing the value of a vote almost to nothing, would proportionally diminish the authority of the electors, at the same time that it augmented the relative value of the offices so much, as to expose the elections to the most violent contests and intrigues.

But there are points, with respect to which it may be a question whether they belong to constitutional law, or to tactics: for example, whether all the members should have the same rights, or whether these rights should be divided among them; so that some should have that of proposing — others, that of deciding upon a proposition already made; some, that of deliberating without voting — others, that of voting without deliberating; whether their deliberations ought to be public; whether absence ought to be permitted — and in case of absence, whether the rights of an individual ought to be transmissible to another; whether the assembly ought always to remain entire, or whether it ought to be obliged or authorized to subdivide itself.

I shall consider these questions as part of my subject, because it appears to me that their examination is intimately connected with that of the best rules to be followed in deliberation; — it not being possible to treat well of the latter, without referring to the others.

§ 2. *Ends that ought to be kept in view in a code of regulations relative to this head.*

The tactics of deliberative assemblies, as well as every other branch of the science of government, ought to have reference to the greatest happiness of society: this is the general end. But its particular object is to obviate the inconveniences to which a political assembly is exposed in the exercise of its functions. Each rule of this tactics can therefore have no justifying reason, except in the *prevention of an evil.* It is therefore with a distinct knowledge of these evils that we should proceed in search of remedies.

These inconveniences may be arranged under the ten following heads: — *

1. Inaction.
2. Useless decision.
3. Indecision.
4. Delays.
5. Surprise or precipitation.
6. Fluctuations in measures.
7. Quarrels.
8. Falsehoods.
9. Decisions, vicious on account of form.
10 Decisions, vicious in respect of their foundation.

We shall develope these different heads in a few words: —

1. *Inaction.* — This supposes that there are points which demand a decision, and which do not receive it, because the assembly is unemployed. The want of activity may arise from many causes; for example, if there be not sufficient motives to overcome natural indolence — if there be no pre-established arrangement for beginning business — if the assembly can only act upon propositions presented to it by the executive power. It may also remain inactive, as was often the case with the ancient States-General of France, because there are preliminaries upon which it is not agreed, questions of etiquette or precedence, disputes concerning priority in the objects to be discussed, &c.

2. *Useless decision.* — This is an evil, not only on account of the loss of time, but also because every useless decision, by augmenting the mass of the laws, renders the whole more obscure, and more difficult to be retained and comprehended.

3. *Indecision.*† — Is the measure proposed a bad one? Indecision is not only an evil from the time lost, but it allows a state of dread to subsist in the public mind — the dread lest this measure should at last be adopted.

Is the measure proposed a good one? The evil which it would have caused to cease is prolonged, and the enjoyment of the good it would produce is retarded, so long as the indecision subsists.

4. *Delays.* — This head may sometimes be confounded with the preceding, but at other times it differs from it: there may be occasion of complaining of indecision when there is no delay; as if, after a single sitting, nothing is done. There may be ground for complaining of delay in cases in which a decision has been formed. In matters of legislation, indecision corresponds to denial of justice, in affairs of justice. Superfluous delays in the deliberations, correspond with useless delays in procedure.

Under the head of delays may be ranked all vague and useless procedures — preliminaries which do not tend to a decision — questions badly propounded, or presented in a bad order — personal quarrels — witty speeches, and amusements suited to the amphitheatre or the playhouse.

5. *Surprises* or *precipitations.* — Surprises consist in precipitating a decision, either by taking advantage of the absence of many of the members, or by not allowing to the assembly either the time or the means of enlightening itself. The evil of precipitation lies in the danger lest it should be a cover for a surprise, or should give a suspicious character to a decision otherwise salutary.

6. *Fluctuation in measures.* — This inconvenience might be referred to the head of delays and lost time; but the evil which results is much greater. Fluctuations tend to diminish the confidence in the wisdom of the assembly, and in the duration of the measures it adopts.

7. *Quarrels.* — The time lost in these is the

* See also the Synoptical Table, page 304, in which these heads of inconvenience are differently arranged.

† I understand by this, the being in a state of irresolution in relation to questions upon which it is desirable to take one side.

least evil. Animosities and personalities in political assemblies produce dispositions most opposite to the search after truth; and have even too much tendency to the formation of those violent parties which beget civil wars.

The histories of Rome and Poland furnish numerous examples. But war is an assemblage of the most destructive acts; and the evil of civil war is never less than double that of a foreign war.

But before reaching this fatal term, the animosities of political assemblies substitute objects altogether foreign from those which ought to occupy them. A thousand incidents which daily arise, lead them to neglect what ought to be attended to. All who take any share in the assembly are in a state of suffering and agitation. An excessive distrust deceives more than an extreme credulity: the most certain result is loss of honour—disgrace for one of the parties engaged in the quarrel, and often for both.

8. *Falsehoods.* — I place under this general head, all acts opposed to the most perfect truth in the procedures of a political assembly. Honesty ought to be its animating principle. This maxim will not be contested even by those who are least observant of it: but those who are most enlightened upon the public interest will the most strongly feel its justice and importance.

9. *Decisions, vicious on account of form.* — In French practice, the resolutions of the chamber are reduced into form after the sitting of the assembly. Hence the resolutions, as entered upon the journals, may err in form though not in substance; that is, they may not entirely or not clearly express the intention of the legislature. They err by *excess*, when they contain anything superfluous; they err by *defect*, when they do not express all that is necessary; they are obscure, when they present a confused mixture of ideas; they are *ambiguous*, when they offer two or more meanings, in such sort that different individuals may find in them grounds for opposing decisions

10. *Decisions, vicious in their foundation.* — Decisions opposed to what ought to be, in order to promote the welfare of the society.

All the inconveniences before enumerated, resolve themselves into this by lines more or less direct.

When an assembly forms an improper or hurtful decision, it may be supposed that this decision incorrectly represents its wishes. If the assembly be composed as it ought to be, its wish will be conformed to the decision of public utility; and when it wanders from this, it will be from one or other of the following causes: —

1. *Absence.* — The general wish of the assembly is the wish of the majority of the total number of its members. But the greater the number of the members who have not been present at its formation, the more doubtful is it whether the wish which is announced as general be really so.

2. *Want of freedom.* — If any restraint have been exercised over the votes, they may not be conformable to the internal wishes of those who have given them.

3. *Seduction.* — If attractive means have been employed to act upon the wills of the members, it may be that the wish announced may not be conformable to their conscientious wish.

4. *Error.* — If they have not possessed the means of informing themselves—if false statements have been presented to them — their understandings may be deceived, and the wish which has been expressed, may not be that which they would have formed had they been better informed.

Such, then, are the inconveniences to which a political assembly may be exposed from the commencement to the termination of its labours; and its system of tactics will the more nearly approach perfection, the more completely it tends to prevent them, or to minimize or reduce them to their lowest term.

Every article of its rules ought therefore to have for its object the obviating either one or more of these inconveniences. But beside the particular advantage which ought to result from each rule taken separately, a good system of tactics will present a general advantage, which depends upon it as a whole. The more nearly it approaches perfection, the more completely will it facilitate to all the co-operators the exercise of their intelligence and the enjoyment of their liberty.

It is by this means that they will accomplish all that is in their power: instead of embarrassing each other by their number, they will yield mutual assistance; they will be able to act without confusion; and they will advance with a regular progression towards a determinate object.

Every cause of disorder is a source of profit to undue influence, and prepares, in the long run, for the approach of tyranny or anarchy. Are its forms vicious? The assembly is cramped in its action, always either too slow or too rapid; lingering among preliminaries, precipitate in reaching results. It will become necessary that one portion of its members submit to exist in a state of nullity, and renounce the independence of their opinions. From that time, strictly speaking, it is no longer a political body; — all its deliberations will be prepared in secret by a small number of individuals, who will become so much the more dangerous, because acting in the name of the assembly they will have no responsibility to fear.

TABULA ATAXIOLOGICA:

OR

SYNOPTICAL TABLE,

GIVING AN

Analytical Sketch of the several Heads of INCONVENIENCE corresponding to the several ENDS proper to be kept in view in framing a System of TACTICS for the Use of a POLITICAL ASSEMBLY.

- The ENDS proper to be kept in view in framing a System of Tactics for the use of a Political Assembly, correspond to the several INCONVENIENCES to which the Proceedings of such Assemblies are liable to give birth: which are
  - incident to the business of the Assembly; being
    - of the 1st order; (1) and those
      - of a positive nature: consisting in the existence of some improper decision: — the impropriety being considered with reference to
        - the substance; and being - -
          - 1. Absolute.
          - 2. Comparative. (3)
          - 3. Negative. (4)
          - 4. Presumptive, through absence of members.
          - 5. ———— through want of information.
          - 6. ———— through want of liberty. (5)
          - 7. In the way of falsehood. (6)
        - the words (7), and existing -
          - 8. In the way of defect. (8)
          - 9. ———— excess.
          - 10. ———— excess and defect together.
          - 11. By reason of ambiguity
          - 12. ———— obscurity.
      - of a negative nature, consisting in the want of some proper decision, through - - -
        - 13. Total inaction. (9)
        - 14. Delay and procrastination.
        - 15. Indecision. (10)
        - 16. Action without an object. (11)
  - collateral to the business of the Assembly: — consisting in impropriety -
    - of the 2d order: (2) consisting in impropriety - - - - - - - - - -
      - 17. Resulting, or presumable, from precipitation.
      - 18. ———————— surprise.
      - 19. ———————— fluctuation. (12)
    - - - - - - - - - - - -
      - 20. Of behaviour (13) on the part of individual members.
      - 21. ———————— individuals at large.

NOTES TO THE TABLE.

(1) [*Of the 1st order,*] viz. Inconveniences which are so in themselves.

(2) [*Of the 2d order,*] viz. Inconveniences which are so, only in virtue of their tendency to give birth to some inconvenience or inconveniences of the 1st order.

(3) [*Comparative,*] viz. The decision in question being compared with some other, the formation of which has been prevented by it.

(4) [*Negative,*] viz. The decision being of no use.

(5) [*Want of liberty.*] Want of liberty may here be considered as capable of resulting not only from physical force or fear, but from the action of any principle of seduction of the alluring class; bribery, for instance.

(6) [*Falsehood.*] viz. Where, along with, or instead of, some *declaration of will*, which is the proper and principal business of a political assembly, the decision in question is such as conveys some *false allegation* relative to a matter of fact.

(7) [*The words.*] In all motions in *amendment*, the decision originally proposed is considered as chargeable with impropriety in this point of view.

(8) [*Defect,*] viz. By reason of the want of certain words.

(9) [*Inaction,*] viz. Not meeting: or meeting without motion or debate.

(10) [*Indecision,*] viz. Motion or debate without decision.

(11) [*Action without an object.*] Instance: debate or conversation, without motion previous or consequential.

(12) [*Fluctuation,*] *i. e.* The successive formation of *opposite* decisions: of which (circumstances remaining unaltered) one or more must accordingly have been *improper*.

(13) [*Impropriety of behaviour.*] For the several possible varieties of improper behaviour, see the Analysis of the several possible modifications of *Delinquency*, given in "The Principles of Morals and Legislation," vol. I. p. 96, Ch. XVIII.

[*Division of offences.*] Any instance of such misbehaviour, in as far as its tendency is to give birth to *absence of members, want of information, want of liberty, inaction, delay, indecision, precipitation, surprise, or fluctuation*, may be regarded in this respect as an inconvenience of the *third* order. For those inconveniences, considered in themselves, are but inconveniences of the second order. Of all the inconveniences to which the nature of such an assembly is capable of giving birth (those excepted which are merely collateral to the business of it,) the only radical ones are, the formation of some bad decision, or the non-formation of some good one. Suppose all the requisite good decisions formed, and no bad ones, all the other incidents marked as attended with inconvenience would either cease to exist, or cease to be attended with that effect.

Most of the above causes of inconvenience possess, over and above their particular tendencies, a sort of common tendency to produce an inconvenience of a more remote and general nature; viz. the bringing a degree of *discredit* on the proceedings and general character of the assembly. Acts of this tendency may be considered as so many *offences against the reputation* of the assembly. *Want of liberty*, decisions chargeable with *falsehood*, and frequent *misbehaviour* on the part of the members, may be particularly noted in this view. What life is to an individual, reputation is to a political assembly. An offence against the reputation of such an assembly, committed by the assembly itself, is a sort of approach to suicide.

N.B.—This Table may be made to serve as a *Test* of the propriety of all manner of Rules and other Institutions, proposed or proposable for the regulation of proceedings in a Political Assembly. Every legitimate reason, given in operating in *favour* of any such rule or institution, consists in the allegation of its tendency to *prevent* the taking place of some one or more of the inconveniences therein exhibited. Every legitimate reason, given as operating in *disfavour* of any such rule or institution, consists in the allegation of its tendency to *give birth* to some one or more of those inconveniences.

§ 3. *Of Political Bodies in general.*

The figurative expression of a body-politic has produced a great number of false and extravagant ideas. An analogy, founded solely on this metaphor, has furnished a foundation for pretended arguments, and poetry has invaded the dominion of reason.

An assembly or collection of individuals, inasmuch as they are found united together, in order to perform a common act, forms what may in certain respects be called a *body*.

But a body does not necessarily imply an assembly, since many individuals may declare their concurrence in the same act without having assembled; for example, by signing the same writing. Nothing is more common in England, than *petitions* to parliament, by hundreds and thousands of individuals, who have separately signed them, without having formed any assembly.

A certain body has a permanent existence; a certain other may have only an occasional, or, so to speak, an ephemeral existence (as an English jury.)

A certain body may have an unlimited extent as to number; a certain other may be be circumscribed within a fixed number.

A certain body may be privileged; a certain other, not: a privileged body is one of which the members, acting together under certain regulations, have received certain rights which the other citizens do not possess.

By *bodies-politic*, we generally understand privileged bodies, which have, under this name, an existence more or less permanent; they are often perpetual, and of a limited number.

A certain body is simple, another is compound. The British Parliament is a compound body, which is formed of two distinct assemblies, and of the supreme head of the State.

It may be easily conceived, that from the rest of a great body already formed, it is possible momentarily to detach a less numerous body: this is what is called a *committee*.

That which constitutes a political body, is the concurrence of many members in the same act. It is therefore clear, that the act of an assembly can only be a declarative act — an act announcing an opinion or a will.

Every act of an assembly must begin by being that of a single individual: but every declarative act, the expression of an opinion or of a will, beginning by being that of an individual, may finish by being that of a body. "This," says Titius, "is what passes in my mind." "This is precisely what has passed in mine," may Sempronius equally say.

It is, therefore, the power of agreeing in the same intellectual act which constitutes the principle of unity in a body.*

§ 4. *Of Permanent Bodies.*

A permanent political body is a collection of individuals designed to produce a train of actions relative to the object of their institution. These actions will be those of all, if they are unanimous; but as it is impossible that there should exist a perfect and constant identity of sentiment in a great assembly of individuals, it is generally the practice to give the same force to the act of the majority as to that of the total number.

The impossibility of an universal and constant concurrence of sentiments in an assembly, is demonstrated by the experience of all times and places. A government, in which the legislative body should be subject to the law of unanimity, is an extravagance so palpable, that without the example of Poland it would scarcely have been possible to believe that it had ever entered into the human mind; whilst the example of Poland equally shows, that if such a law were made, it could not be observed, and that in the case in which it should be observed, it would only produce the most frightful anarchy.

When we consider the decision of a political body, what appears desirable in the first place, is to obtain the unanimous wish of its members: what is desirable in the second place, is the will which most nearly approaches it. This leads us to be contented with the will of the simple majority; since, how far soever this may be from the really universal will, it is nearer to it than the contrary will.

Are the numbers found equal on each side? there results from it no general act — one will destroying the other; no conclusion is arrived at — things will remain as they were, unless there be a necessity for giving a predominant voice to some person.

---

* It is in reality only an intellectual act which can be identical among many individuals, and constitute the principle of unity in a body. It cannot be a physical act: such an act, peculiar to the individual who exercises it, does not offer any foundation for this identity. When the Roman senate decided that the consul Opimius should put Tiberius Gracchus to death, this decision was literally, and without figure, the act of each senator who contributed to it by his vote. When Opimius in consequence slew Gracchus with his sword, the blow struck was the act of Opimius alone. Jurists say that this act was no less the act of the senate than the other. *Qui facit per alium, facit per se.* I am not examining whether this mode of expression, which tends to confound one person with another, may have any use; all that I intend to observe here is, that if, for the sake of abbreviation, or for greater emphasis, this stroke of the sword be represented as the act of the senate, it can only be so in a figurative sense.

I have not as yet spoken of the case of absence, which continually changes the identity of the assembly. What shall be said of a will which is not declared? It does not belong either to one side or the other. It cannot be counted in the composition of the general will.

To annul the will of the assembly on account of absentees, would be to give to the wills of the absentees the same effect as if they had been declared for the party of the minority, which by the supposition has not been done. In the calculation of suffrages, the true value of an absent will, to speak mathematically, is *one less one;* that is, equal to zero. To give to it the value of *plus one*, or *minus one*, would be equally a false calculation.

But is it always necessary to have a decision? No; without doubt: there are many cases in which it would be too dangerous to permit a small portion of the assembly to act alone. It is better not to have any decision, than to have one which does not unite a certain proportion of the suffrages of the whole body. The number necessary for rendering any act of the assembly legal, should be fixed beforehand. This important question is only mentioned here — it will be discussed separately hereafter.

It is enough to remark here, that the ordinary formula — *such has been the decision of the assembly* — announces some very different facts. With an assembly of which the numerical composition continually varies, the only identity which exists is the legal effect of its decisions.

This is too metaphysical, it may be said: but it may be replied, it is necessary, since it is wished to explain the nature of a political body, without having recourse to figurative language. This expression has served as a pretext for allegories without end, which themselves have become the foundation of a multitude of puerile reasonings.

The imaginations of writers have been stretched to give to political bodies the properties of different kinds of bodies. Sometimes they are mechanical bodies; and then it is a question of levers and springs — of wheelwork — of shocks — of friction — of balancing — of preponderance.

Sometimes they are animated bodies; — and then they have borrowed all the language of physiology: — they speak of health — of sickness — of vigour — of imbecility — of corruption — of dissolution — of sleep — of death and resurrection. I cannot tell how many political works would be annihilated, if this poetical jargon were abstracted from them, with which their authors have thought to create ideas, when they have only combined words.

It is true, that for purposes of abbreviation, it is lawful to borrow certain traits of figurative language, and that one is even obliged so to do; since intellectual ideas can only be expressed by sensible images. But in this case there are two precautions to be observed: the one, never to lose sight of simple and rigorous truth — that is to say, to be always ready mentally to translate the figurative into simple language; the other, not to found any conclusion upon a figurative expression, so far as it has anything incorrect in it — that is to say, when it does not agree with the real facts.

Figurative language is very useful for facilitating conception, when it follows in the train of simple language: it is mischievous when it occupies its place. It accustoms us to reason upon the most false analogies, and gathers round the truth, a mist which the most enlightened minds are scarcely able to penetrate.

§ 5. *Division of the Legislative Body into two assemblies.*

Is it desirable to have two assemblies, whose agreement should be rendered necessary to the authority of a law?

There are reasons on both sides: let us review them.

The division of the legislative body appears subject to the following inconveniences: —

1. It will often have the effect of giving to the minority the effect of the majority. The unanimity even of one of the two assemblies would be defeated by a majority of a single vote in the other assembly.

2. This arrangement is calculated to favour two different intentions, according to the quality of the members thus distributed. If it be founded upon orders — for example, peers and commoners — the result is to favour an undue preponderance — to set the interests of a particular class in opposition to the interests of the nation itself. If there are two rival assemblies without distinctions, — the result is to favour corruption; since if a majority can be secured in the one, it is enough: the other may be neglected.

3. Each assembly would be deprived of a part of the knowledge it would have possessed in a state of union. The same reasons are not presented in the two houses with the same force. The arguments which have decided the votes in the one, may not be employed in the other. The proposer of the motion, who has made the subject a profound study, will not be present in the assembly in which objections are made against it. The cause is judged without hearing the principal party.*

* This inconvenience will be lessened if the deliberations are public and successive. The reasons which have prevailed in one assembly will be known in the other.

4. This division necessarily produces useless delays. Two assemblies cannot be engaged at the same time upon the same matter — at least in all those cases in which there are original documents to be presented, or witnesses to be heard. Hence double labour — double delay.

Such assemblies cannot exist without opposite pretensions. There will arise questions of competency, which will lead to negotiations, and often to ruptures. These disputes concerning powers or prerogatives, beside their own inconveniences, beside the loss of time they occasion, will often furnish the means of striking both assemblies with immovability. This continually happened in the ancient States-General of France. The court encouraged disunion between the different orders; it combated the one by the other, and always found in this discord a plausible pretext for dismissing them.

5. The final result of this division is to produce a distribution of powers, which gives to one of the assemblies the *initiative*, and reduces the other to a simple *negative* — a natural and fruitful source of undue opposition, of quarrels, of inaction, and of perpetuity for abuse.

Everything tends to produce a repartition of this nature. Two independent assemblies cannot long exist without measuring their strength. Besides, those who have the principal conduct of affairs cannot act without laying down a plan, and without securing the means of its execution. They must choose one of the assemblies in order to begin their operations there; if one appear to have more influence than the other, they will carry all important propositions thither. This alone would be sufficient entirely to destroy the balance. Thus would be established, not by right, but in fact, a distinction between the two powers, the one being endowed with the initiative, and the other with a simple negative.

But in reference to personal interest — the only motive upon which we can constantly reckon — that body which is reduced to a single negative, will be opposed to everything. It can only show its power by rejecting: it appears as nothing when it accepts. To play the first part, is to govern; — to play the second, is to be governed.

Deprived of the motives of honour, this negative body will detach itself insensibly from the habits of business: business will be considered an ungrateful task. This body will reserve to itself the easiest part, that of opposing everything, except in those cases in which it fears to compromise itself with public opinion, and to lose its reputation by an odious resistance.

The following are the reasons which may be alleged in favour of this division: — *

[First advantage, *Maturity of discussion.*

This division is a certain method of preventing precipitation and surprise.

It is true, that in a single assembly, rules may be established which prescribe multiplied examinations, according to the importance of the business; and it is thus that we find in the House of Commons *three readings*, three discussions, at different intervals; — discussion in committee, article by article; report of the committee; examination of this report: petitions from all who are interested; appointment of a day for considering these petitions. It is by these general precautions, and others like them, that the danger of surprise is obviated, and maturity of deliberation secured.

This is true: but a single assembly may have the best rules, and disregard them when it pleases. Experience proves that it is easy to lay them aside; and urgency of circumstances always furnishes a ready pretext, and a popular pretext, for doing what the dominant party desires. If there are two assemblies, the forms will be observed; because if one violate them, it affords a legitimate reason to the other for rejection of everything presented to it after such suspicious innovation.

Besides, multiplied discussions in a single assembly do not present the same security as those which take place among different bodies. Diversity of interests, of views, of prejudices and habits, are absolutely necessary for the examination of objects under all their relations. Men who act long together contract the same connexions and modes of thinking, a spirit of routine and of party, which has its natural correction in another association.

A second assembly may therefore be considered as a tribunal of appeal from the judgment of the first.

Second advantage, *Restriction of the power of a single assembly.*

An assembly of deputies elected by the people, and removable, would from this cause be in a state of dependence, which would oblige them to consult the wishes of their constituents: but until a system of absolutely free election and removability is established, supposing such a system easy of establishment, and without inconvenience, it is no less true that a legislative assembly is only responsible to public opinion, from which a very imperfect security results against the abuse of power. If there be two assemblies differently constituted, the one naturally serves as a restraint to the other; the power of the demagogue will be weakened; the same individual will scarcely be able to exercise the same influence in both assemblies. There will arise an emulation of credit and talents. Even the jealousy of one assembly would become in this case a safeguard against the usurpations of the other, and the constitution would be

* Mr. Bentham not having executed this labour, I have endeavoured to supply it. — *Dumont.*

preserved by passions which operate in different directions.

Third advantage, *Separation of the nobility and the people.* If there be in a state certain powerful and privileged bodies, such as the nobility and clergy, it is better to give to their deputies a separate assembly, than to confound them with those of the people in one house. Why? In the *first* place, lest if their number were not determined, they should obtain, from the influence of their rank and fortune, a considerable preponderance in the elections.

2*dly*, If they act separately, the whole responsibility of opinion will rest upon their own heads: they cannot be ignorant that the public will explain their conduct by reference to their personal interests, and that the refusal of a popular law will expose them to the severity of the judgment of the whole nation. If they are confounded with the deputies of the people in one assembly, they will possess means of influence which will act secretly, and their peculiar votes will be hidden in the general vote.

3*dly*, If in a great state you have only a single assembly, it will be too numerous to act well, or it will be necessary to give to the people only such a number of deputies as will be insufficient to establish public confidence.

Of the five objections which have been presented against the division of the legislative power, the fifth is doubtless the strongest. One of the two assemblies will obtain the preponderance — it will have the initiation. There remains nothing for the other, in the majority of cases, but the negative. It appears sufficiently absurd to create a body of senators, or of nobles solely for the purpose of opposing the wishes of the deputies of the people. But in this manner of representing the matter, it is considered only in respect of its abuse, and there is a double departure from truth, in trusting more to an assembly called representative than ought to be trusted, and fearing more from an assembly of nobles than ought to be feared.*

It cannot be denied, that at all times the division of the legislative body, whatever may be the composition of the two houses, presents great obstacles to the reform of abuses. Such a system is less proper for creating than preserving. This shows that it is suitable to an established constitution. The vessel of the state, secured by these two anchors, possesses a power of resistance against the tempests, which could not be obtained by any other means.

But if the division of the legislative bodies, be extended to three or four assemblies, it will be seen to give birth to a complication of irremediable inconveniences: — not only are the delays, the rivalries, the obstacles to every species of improvement, multiplied, but a means is also given to the executive of stopping everything, by a superior influence over a single assembly, or of annihilating the power of one of these assemblies, if the concurrence of two others decides everything. There results from such a division, an illegal and fraudulent association, in which two of the associates have only to agree together, in order to leave the third only the semblance of power. It is thus that the nobility and clergy in Denmark held the commons in a condition of nearly absolute nullity; and it was thus also, that by a union between the commons and the clergy against the nobility, the States were destroyed, and absolute power bestowed on the King. Sicily also had its parliament, in which the two superior orders having always agreed among themselves against the third estate, have reduced it to an existence purely nominal.

Returning to the question of two assemblies: if it were asked what good has resulted in England from the House of Lords, it would not be easy to cite examples of bad laws which it has prevented by its negative; it is possible, on the contrary, by citing many good ones which it had rejected, to conclude that it was more hurtful than useful. But this conclusion would not be just; for in examining the effects of an institution, we ought to take account of what it does, without being perceived, by the simple faculty of hindering. An individual is not tempted to ask for what he is certain beforehand will be refused. No one undertakes an enterprise which is certain not to succeed. A constitution becomes stable, because there is a power established for its protection. If there were no positive proof of good which the House of Lords has done, we may in part attribute to it the moderation with which the House of Commons has used its power, the respect which it shows for the limits of its slightly determined authority, and its constant subjection to the rules which it prescribes to itself.

I shall confine myself to a simple enumeration of several collateral advantages resulting from a superior chamber; such as the relief

* To the reasons already given, for thinking that the nobility when united in one chamber are less to be feared than is commonly thought, it would be proper to add another, which is drawn from their character.

The nobility are naturally indolent; they dislike business, because, they are unaccustomed to it. Even in England, the House of Lords is extremely negligent of its senatorial functions. It is frequently necessary to recruit it, to maintain it in activity. They are like certain Indians, who allow themselves to be governed by men brought from another climate.

Those who have most to lose are in consequence most timid. Their rank makes them most prominent. They cannot escape in the crowd. If they render themselves unpopular, this unpopularity follows them everywhere.

which it gives to the government in the eyes of the people; the greater force conferred on the laws, when the nobility have concurred in sanctioning them; the emulation which diversity of ranks spreads among the different classes of society; the advantage of presenting a fixed and precise career to ambition, in which a legitimate reward is worth more than the demagogue could promise himself from success; and the still greater advantage of retaining the nobility within certain limits, of rendering it hereditary only in the eldest son, and of connecting its interest with the general interest, by a continual transfusion of these noble families among the body of the nation. There is no ducal house in England which has not in its bosom a part more attached by interest to the liberty of the commons, than to the prerogatives of the peerage. This is the principle of stability. Each one in this beautiful political order, is more afraid of losing what he possesses, than desirous of what he has not.]

CHAPTER II.

OF PUBLICITY.

BEFORE entering into the detail of the operations of the assembly, let us place at the head of its regulations the fittest law for securing the public confidence, and causing it constantly to advance towards the end of its institution.

This law is that of *publicity*. The discussion of this subject may be divided into six parts;—1. Reasons for publicity; 2. Examination of objections to publicity; 3. Exceptions to be made; 4. The points to which publicity should extend; 5. The means of publicity; 6. Observations on the practice established in England.

§ 1. *Reasons for Publicity.*

1. To constrain the members of the assembly to perform their duty.

The greater the number of temptations to which the exercise of political power is exposed, the more necessary is it to give to those who possess it, the most powerful reasons for resisting them. But there is no reason more constant and more universal than the superintendence of the public. The public compose a tribunal, which is more powerful than all the other tribunals together. An individual may pretend to disregard its decrees — to represent them as formed of fluctuating and opposite opinions, which destroy one another; but every one feels, that though this tribunal may err, it is incorruptible; that it continually tends to become enlightened; that it unites all the wisdom and all the justice of the nation; that it always decides the destiny of public men; and that the punishments which it pronounces are inevitable. Those who complain of its judgments, only appeal to itself; and the man of virtue, in resisting the opinion of to-day—in rising above general clamour, counts and weighs in secret the suffrages of those who resemble himself.

If it were possible to abstract one's self from this tribunal, who would wish so to do? It without doubt would be neither the good nor the wise man, since in the long run these have nothing to fear, but everything to hope. The enemies of publicity may be collected into three classes: the malefactor, who seeks to escape the notice of the judge; the tyrant, who seeks to stifle public opinion, whilst he fears to hear its voice; the timid or indolent man, who complains of the general incapacity in order to screen his own.

It may perhaps be said, that an assembly, especially if numerous, forms an internal public, which serves as a restraint upon itself. I reply, that an assembly, how numerous soever, will never be sufficiently large to supply the place of the true public. It will be most frequently divided into two parties, which will not possess, in reference one to another, the qualities necessary for properly exercising the function of judges. They will not be impartial. Whatever the conduct of an individual may be, he will almost always be secure of the suffrages of one party, in opposition to the other. The internal censure will not be sufficient to secure probity, without the assistance of external censure. The reproaches of friends will be little dreaded, and the individual will become insensible to those of his enemies. The spirit of party shut up within narrow limits, equally strips both praise and blame of its nature.

2. To secure the confidence of the people, and their assent to the measures of the legislature: —

Suspicion always attaches to mystery. It thinks it sees a crime where it beholds an affectation of secresy; and it is rarely deceived. For why should we hide ourselves if we do not dread being seen? In proportion as it is desirable for improbity to shroud itself in darkness, in the same proportion is it desirable for innocence to walk in open day, for fear of being mistaken for her adversary. So clear a truth presents itself at once to the minds of the people, and if good sense had not suggested it, malignity would have sufficed to promulgate it. The best project prepared in darkness, would excite more alarm than the worst, undertaken under the auspices of publicity.

But in an open and free policy, what confidence and security — I do not say for the people, but for the governors themselves! Let it be impossible that any thing should be done which is unknown to the nation — prove to it that you neither intend to deceive

nor to surprise—you take away all the weapons of discontent. The public will repay with usury the confidence you repose in it. Calumny will lose its force; it collects its venom in the caverns of obscurity, but it is destroyed by the light of day.

That a secret policy saves itself from some inconveniences I will not deny; but I believe, that in the long run it creates more than it avoids; and that of two governments, one of which should be conducted secretly and the other openly, the latter would possess a strength, a hardihood, and a reputation which would render it superior to all the dissimulations of the other.

Consider, in particular, how much public deliberations respecting the laws, the measures, the taxes, the conduct of official persons, ought to operate upon the general spirit of a nation in favour of its government. Objections have been refuted, — false reports confounded; the necessity for the sacrifices required of the people have been clearly proved. Opposition, with all its efforts, far from having been injurious to authority, will have essentially assisted it. It is in this sense that it has been well said, *that he who resists, strengthens:* for the government is much more assured of the general success of a measure, and of the public approbation, after it has been discussed by two parties, whilst the whole nation has been spectators.

Among a people who have been long accustomed to public assemblies, the general feeling will be raised to a higher tone—sound opinions will be more common—hurtful prejudices, publicly combated, not by rhetoricians but by statesmen, will have less dominion. The multitude will be more secure from the tricks of demagogues, and the cheats of impostors; they will most highly esteem great talents, and the frivolities of wit will be reduced to their just value. A habit of reasoning and discussion will penetrate all classes of society. The passions, accustomed to a public struggle, will learn reciprocally to restrain themselves; they will lose that morbid sensibility, which among nations without liberty and without experience, renders them the sport of every alarm and every suspicion. Even in circumstances when discontent most strikingly exhibits itself, the signs of uneasiness will not be signs of revolt; the nation will rely upon those trustworthy individuals whom long use has taught them to know; and legal opposition to every unpopular measure, will prevent even the idea of illegal resistance. Even if the public wish be opposed by too powerful a party, it will know that the cause is not decided without appeal: hence persevering patience becomes one of the virtues of a free country.

The order which reigns in the discussion of a political assembly, will form by imitation the national spirit. This order will be reproduced in clubs and inferior assemblies, in which the people will be pleased to find the regularity of which they had formed the idea from the greater model. How often, in London, amid the effervescence of a tumult, have not well-known orators obtained the same attention as if they had been in parliament? The crowd has ranged itself around them, has listened in silence, and acted with a degree of moderation which could not be conceived possible even in despotic states, in which the populace, arrogant and timid alternately, is equally contemptible in its transports and its subjection. Still, however, the régime of publicity — very imperfect as yet, and newly tolerated, — without being established by law, has not had time to produce all the good effects to which it will give birth. Hence have arisen riots, for which there was no other cause than the precipitation with which the government acted, without taking the precaution to enlighten the people.*

3. To enable the governors to know the wishes of the governed.

In the same proportion as it is desirable for the governed to know the conduct of their governors, is it also important for the governors to know the real wishes of the governed. Under the guidance of publicity, nothing is more easy. The public is placed in a situation to form an enlightened opinion, and the course of that opinion is easily marked. Under the contrary régime, what is it possible to know with certainty? The public will always proceed, speaking and judging of everything; but it judges without information, and even upon false information: its opinion, not being founded upon facts, is altogether different from what it ought to be, from what it would be, if it were founded in truth. It ought not to be believed that government can dissipate at pleasure, those errors which it would have been easy to prevent. Late illumination does not always repair the evil of a previously erroneous impression. Have the people, from the little which has transpired respecting a project, conceived sinister apprehensions? We will suppose them unfounded; but this does not alter the case. they become agitated; they murmur; alarm is propagated; resistance is prepared. Has the government nothing to do but to speak—to make known the truth, in order to change the current of the public mind? No; without doubt: confidence is of slow growth. The odious imputations exist; the explanations which are given of necessity, are considered as the acknowledgements of weakness. Hence improvement itself produces a shock, when improperly introduced,

* For example, the riots in London in 1780.

and when it is opposed to the inclinations of the people. The history of the Emperor Joseph II. would furnish a multitude of examples.

To these major considerations may be joined others, which ought not to be neglected.

4. In an assembly elected by the people, and renewed from time to time, publicity is absolutely necessary to enable the electors to act from knowledge.

For what purpose renew the assembly, if the people are always obliged to choose from among men of whom they know nothing?

To conceal from the public the conduct of its representatives, is to add inconsistency to prevarication: it is to tell the constituents, "You are to elect or reject such or such of your deputies without knowing why — you are forbidden the use of reason — you are to be guided in the exercise of your greatest powers only by hazard or caprice."

5. Another reason in favour of publicity:— To provide the assembly with the means of profiting by the information of the public.

A nation too numerous to act for itself, is doubtless obliged to entrust its powers to its deputies. But will they possess in concentration all the national intelligence? Is it even possible that the elected shall be in every respect the most enlightened, the most capable, the wisest persons in the nation? — that they will possess, among themselves alone, all the general and local knowledge which the function of governing requires? This prodigy of election is a chimera. In peaceful times, wealth and distinguished rank will be always the most likely circumstances to conciliate the greatest number of votes. The men whose condition in life leads them to cultivate their minds, have rarely the opportunity of entering into the career of politics. Locke, Newton, Hume, Adam Smith, and many other men of genius, never had a seat in parliament. The most useful plans have often been derived from private individuals. The establishment of the sinking fund by Mr. Pitt, it is well known, was the fruit of the calculations of Dr. Price, who would never have had the leisure requisite for such researches, if his mind had been distracted by political occupations. The only public man, who from the beginning of the quarrel with the American colonies had correct ideas upon the subject, and who would have saved the nation from war if he had been listened to, was a clergyman, excluded by this circumstance from the national representation.* But without entering into these details, it may easily be conceived how effective publicity is, as a means of collecting all the information in a nation, and consequently for giving birth to useful suggestions.

6. It may be thought descending from the serious consideration of this subject, to reckon among the advantages of publicity, *the amusement which results from it.* I say amusement by itself, separate from instruction, though it be, in fact, not possible to separate them.

But those who regard this consideration as frivolous, do not reason well. What they reckon *useful*, is what promises an advantage: amusement is an advantage already realized; and this kind of pleasure in particular, appears to me sufficient by itself to increase the happiness of any nation, which would enjoy much more than those nations who know it not.

Memoirs are one of the most agreeable parts of French literature, and there are few books which are more profound: but memoirs do not appear till long after the events which they record have happened, and they are not in the hands of every one. English newspapers are memoirs, published at the moment when the events occur; in which are found all the parliamentary discussions—everything which relates to the actors on the political theatre; in which all the facts are freely exhibited, and all opinions are freely debated. One of the Roman emperors proposed a reward for the individual who should invent a new pleasure: no one has more richly deserved it, than the individual who first laid the transactions of a legislative assembly before the eyes of the public.†

§ 2. *Objections to Publicity.*

If publicity be favourable in so many respects to the governors themselves — so proper for securing them against the injustice of the public, for procuring for them the sweetest reward of their labours — why are they so generally enemies of this régime? Must it be sought in their vices? in the desire of the governors to act without responsibility — to withdraw their conduct from inspection — to impose upon the people — to keep them in subjection by their ignorance? Such motives may actuate some among them; but to attribute them to all, would be the language of satire. There may be unintentional errors in this respect, founded upon specious objections: let us endeavour to reduce them to their just value.

First objection — "The public is an incompetent judge of the proceedings of a political assembly, in consequence of the ignorance and passions of the majority of those who compose it."

If I should concede, that in the mass of the public there may not be one individual in a hundred who is capable of forming an enlightened judgment upon the questions which

* Dean Tucker.

† See Paley's Moral Philosophy, b. vi. ch. 6, in which this subject is treated in a manner to which there is nothing to add.

are discussed in a political assembly, I shall not be accused of weakening the objection; and yet, even at this point, it would not appear to me to have any force against publicity.

This objection would have some solidity, if, when the means of judging correctly were taken from the popular tribunal, the inclination to judge could be equally taken away: but the public do judge and will always judge. If it should refrain from judging, for fear of judging incorrectly, far from deserving to be charged with ignorance, its wisdom would deserve to be admired. A nation which could supend its judgment, would not be composed of common men, but of philosophers.

But the increase of publications, it will be said, will increase the number of bad judges in a much greater proportion than the good ones.

To this it may be replied, — that for this purpose it is necessary to distinguish the public into three classes: The first is composed of the most numerous party, who occupy themselves very little with public affairs — who have not time to read, nor leisure for reasoning. The second is composed of those who form a kind of judgment, but it is borrowed — a judgment founded upon the assertions of others, the parties neither taking the pains necessary, nor being able, to form an opinion of their own. The third is composed of those who judge for themselves, according to the information, whether more or less exact, which they are able to procure.

Which of these three classes of men would be injured by publicity?

It would not be the first; since, by the supposition, it would not affect them. It is only the third: these judged before—they will still judge; but they judged ill upon imperfect information; they will judge better when they are in possession of the true documents.

Whilst in respect of the second class, we have said that their judgments are borrowed, they must therefore be the echo of those of the third class. But this class being better informed, and judging better, will furnish more correct opinions for those who receive them ready made. By rectifying these, you will have rectified the others; by purifying the fountain, you will purify the streams.

In order to decide whether publicity will be injurious or beneficial, it is only necessary to consider the class which judges; because it is this alone which directs opinion. But if this class judge ill, it is because it is ignorant of the facts — because it does not possess the necessary particulars for forming a good judgment. This, then, is the reasoning of the partisans of mystery: — "You are incapable of judging, because you are ignorant; and you shall remain ignorant, that you may be incapable of judging."

Second objection — "Publicity may expose to hatred a member of the assembly, for proceedings which deserve other treatment."

This objection resolves itself into the first, — the incapacity of the people to distinguish between its friends and its enemies.

If a member of a political assembly have not sufficient firmness to brave a momentary injustice, he is wanting in the first quality of his office. It is the characteristic of error to possess only an accidental existence, which may terminate in a moment, whilst truth is indestructible. It requires only to be exhibited, and it is to effect this that everything in the region of publicity concurs. Is injustice discovered? — hatred is changed into esteem; and he who, at the expense of the credit of to-day, has dared to draw for reputation on the future, is paid with interest.

As regards reputation, publicity is much more useful to the members of an assembly than it can be hurtful: it is their security against malignant imputations and calumnies. It is not possible to attribute to them false discourses, nor to hide the good they have done, nor to give to their conduct an unfair colouring. Have their intentions been ill understood?—a public explanation overturns the false rumours, and leaves no hold for clandestine attacks.

Third objection — "The desire of popularity may suggest dangerous propositions to the members; — the eloquence which they will cultivate will be the eloquence of seduction, rather than the eloquence of reason; — they will become tribunes of the people, rather than legislators."

This objection also resolves itself into the first,—that is, the incompetence of the people to judge of their true interests, to distinguish between their friends and their flatterers.

In a representative state, in which the people are not called upon to vote upon political measures, this danger is little to be apprehended. The speeches of the orators, which are known to them only through the newspapers, have not the influence of the passionate harangues of a seditious demagogue. They do not read them till after they have passed through a medium which cools them; and besides, they are accompanied by the opposite arguments, which, according to the supposition, would have all the natural advantage of the true over the false. The publicity of debates has ruined more demagogues than it has made. A popular favourite has only to enter parliament, and he ceases to be mischievous. Placed amid his equals or his superiors in talent, he can assert nothing which will not be combated: his exaggerations will be reduced within the limits of truth, his presumption humiliated, his desire of momentary popularity ridiculed: and the flatterer of the people will finish by disgusting the people themselves.

Fourth objection — "In a monarchy, the publicity of the proceedings of political assemblies, by exposing the members to the resentment of the head of the State, may obstruct the freedom of their decisions."

This objection, more specious than the preceding, vanishes when it is examined, and even proves an argument in favour of publicity. If such an assembly be in danger from the sovereign, it has no security except in the protection of the people. The security arising from secret deliberations is more specious than real. The proceedings of the assembly would always be known to the sovereign, whilst they would always be unknown to those who would only seek to protect it, if the means were left to them.

If, then, a political assembly prefer the secret regimé, by alleging the necessity of withdrawing itself from the inspection of the sovereign, it need not thus deceive itself: this can only be a pretence. The true motive of such conduct must rather be to subject itself to his influence, without too much expoing itself to public blame; for by excluding the public, it only frees itself from public inspection. The sovereign will not want his agents and his spies: though invisible, he will be, as it were, present in the midst of the assembly.

Is it objected against the régime of publicity, that it is a system of *distrust?* This is true; and every good political institution is founded upon this base. Whom ought we to distrust, if not those to whom is committed great authority, with great temptations to abuse it? Consider the objects of their duties: they are not their own affairs, but the affairs of others, comparatively indifferent to them, very difficult, very complicated,—which indolence alone would lead them to neglect, and which require the most laborious application. Consider their personal interests: you will often find them in opposition to the interests confided to them. They also possess all the means of serving themselves at the expense of the public, without the possibility of being convicted of it. What remains, then, to overcome all these dangerous motives? what has created an interest of superior force? and what can this interest be, if it be not respect for public opinion—dread of its judgments—desire of glory? — in one word, everything which results from publicity?

The efficacy of this great instrument extends to everything — legislation, administration, judicature. Without publicity, no good is permanent: under the auspices of publicity, no evil can continue.

§ 3. *Objects to which publicity ought to extend.*

The publication of what passes in a political assembly ought to embrace the following points:—

1. The tenor of every motion.
2. The tenor of the speeches or the arguments for and against each motion.
3. The issue of each motion.
4. The number of the votes on each side.
5. The names of the voters.
6. The reports, &c. which have served as the foundation of the decision.

I shall not stop to prove that the knowledge of all these points is necessary for putting the tribunal of the public in a condition for forming an enlightened judgment. But an objection may be made against the publicity of the respective number of the voters. By publishing these, it may be said, the authority of the acts of the assembly will be in danger of being weakened, and the opposition will be encouraged when the majority is small.

To this it may be replied, that it is proper to distinguish between illegal and legal opposition. The first is not to be presumed; the second is not an evil.

The first, I say, is not to be presumed. The existence of a government regulated by an assembly, is founded upon an habitual disposition to conformity with the wish of the majority: constant unanimity is not expected, because it is known to be impossible; and when a party is beaten by a small majority, far from finding in this circumstance a motive for illegal resistance, it only discovers a reason for hope of future success.

If afterwards a legal opposition be established, it is no evil; for the comparative number of suffrages being the only measure of probability as to the correctness of its decisions, it follows that the legal opposition cannot be better founded than when guided by this probability. Let us suppose the case of a judicial decision; — that there have been two judgments, the one given by the smallest majority possible, the other by the greatest: would it not be more natural to provide an appeal against the first than against the second?

But the necessity of appeal in judicial matters is not nearly of the same importance as in matters of legislation. The decisions of the judges apply only to individual cases: the decisions of a legislative assembly regulate the interests of a whole nation, and have consequences which are continually renewed.

Do you expect that you will obtain greater submission by concealing from the public the different numbers of the votes? You will be mistaken. The public, reduced to conjecture, will turn this mystery against you. It will be very easily misled by false reports. A small minority may represent itself as nearly equal to the majority, and may make use of a thousand insidious arts to deceive the public as to its real force.

The American Congress, during the war of

independence, was accustomed, if I am not deceived, to represent all its resolutions as unanimous. Its enemies saw in this precaution the necessity of hiding an habitual discord. This assembly, in other respects so wise, chose rather to expose itself to this suspicion, than to allow the degrees of dissent to the measures which it took, to be known. But though this trick might succeed in this particular case, this does not prove its general utility. The Congress, secure of the confidence of its constituents, employed this stratagem with their approbation, for the purpose of disconcerting its enemies.

The names of the voters ought to be published, not only that the public may know the habitual principles of their deputies, and their assiduity in attending, but also for another reason. The quality of the votes has an influence upon opinion, as well as their number. To desire that they should all have the same value, is to desire that folly should have the same influence as wisdom, and that merit should exist without motive and without reward.

§ 4. *Exceptions to the rule of Publicity.*

Publicity ought to be suspended in those cases in which it is calculated to produce the following effects: —

1. To favour the projects of an enemy.
2. Unnecessarily to injure innocent persons.
3. To inflict too severe a punishment upon the guilty.

It is not proper to make the law of publicity absolute, because it is impossible to foresee all the circumstances in which an assembly may find itself placed. Rules are made for a state of calm and security: they cannot be formed for a state of trouble and peril. Secresy is an instrument of conspiracy; it ought not, therefore, to be the system of a regular government.

§ 5. *Means of Publicity.*

The following are the means of publicity which may be employed, either in whole or in part, according to the nature of the assembly, and the importance of its affairs.

1. Authentic publication of the transactions of the assembly upon a complete plan, including the six points laid down in the preceding article: —
2. The employment of short-hand writers for the speeches; and in cases of examination, for the questions and answers.
3. Toleration of other non-authentic publications upon the same subject.
4. Admission of strangers to the sittings.

The employment of short-hand writers would be indispensable in those cases in which it would be desirable to have the entire tenor of the speech. But recourse need not be had to this instrument, except in discussions of sufficient importance to justify the expense. In England, in an ordinary trial, the parties are at liberty to employ them. In the solemn trial of Warren Hastings, the House of Commons on the one side, and the accused on the other, had their short-hand writers; — the House of Lords, in character of judge, had also its own.

With regard to non-authentic publications, it is necessary to tolerate them, either to prevent negligence and dishonesty on the part of the official reporters, or to prevent suspicion. An exclusive privilege would be regarded as a certificate of falsity. Besides, the authentic publication of the proceedings of the assembly could only be made with a slowness which would not give the public satisfaction, without reckoning the evil which would arise in the interval from false reports, before the authentic publication arrived to destroy them.

Non-official journals completely accomplish this object. Their success depends upon the avidity of the public, and their talent consists in satisfying it. This has in England reached such a point of celerity, that debates which have lasted till three or four o'clock in the morning, are printed and distributed in the capital before mid-day.

The admission of the public to the sittings is a very important point; but this subject requires explanations, which would not here be in their place. It will be treated separately.

The principal reason for this admission is, that it tends to inspire confidence in the reports of the journals. If the public were excluded, it would always be led to suppose that the truth was not reported, or at least that part was suppressed, and that many things passed in the assembly which it did not know. But independently of this guarantee, it is very useful for the reputation of the members of the assembly to be heard by impartial witnesses, and judged by a portion of the public which is changed every day. This presence of strangers is a powerful motive to emulation among them, at the same time that it is a salutary restraint upon the different passions to which the debates may give rise.*

§ 6. *State of things in England.*

In order to form a just idea of the state of things in England relative to publicity, it is necessary to pay attention to two very different things — the rules, and the actual practice. The following are the rules: —

1. All strangers (that is to say, all who are not members of the assembly) are prohibited from entering, under pain of *immediate impri-*

* In the Swiss cantons, no strangers are admitted to the debates in their representative councils, nor are any accounts of their proceedings published

sonment. Introduction by a member forms no exception to the prohibition, nor any ground of exemption from the punishment. This prohibition, established during the stormy times of the civil war in 1650, has been renewed seven times, under circumstances which furnish neither this excuse nor any other.*

2. Prohibition, as well of others as of the members themselves, to report anything that passes in the House, or to publish anything on the subject without the authority of the House.

This regulation, which dates from the commencement of the civil war, has been renewed thirty times, and for the last time in 1738, in an order in which passion appears carried to its greatest height. The language of the proudest despots is gentle and moderate, in comparison with that of this popular assembly.

3. Since 1722, there has been published by the House of Commons, what are called the Votes of the House; that is, a kind of history of its proceedings, meagre and dry, containing the formal proceedings, with the motions and decisions; and in cases of division, the numbers for and against, but without any notice of the debates.

Before this period, this publication only took place occasionally.

These votes, collected and republished at the end of the year, with an immense mass of public laws and private acts, form what are called the Journals of the House. These journals were formerly given to each member, but not sold to the public.†

4. Projects of laws before they are passed by parliament. These projects, called *bills*, are not printed under a general rule, but the printing is ordered upon special motion, and for the exclusive use of the members; so that no one can know what they contain, unless he obtain one of these privileged copies through a member. It is, however, of more importance that the public should be made acquainted with these, than with the votes.

How singular soever it may be thus to see the deputies of the people withdrawing themselves with so much hauteur from the observation of their constituents, the principles of a free government are as yet so little known, that there has been no general complaint against a conduct which tends to destroy all responsibility on the part of the representatives, and all influence on the part of the nation.

But since public opinion, more enlightened, has had greater ascendency, and principally since the accession of George III., though these anti-popular regulations are still the same, a contrary practice has prevailed in many particulars. It is doubtless to be regretted, that whatever improvement has taken place in England has been accomplished through a continual violation of the laws; but it is gratifying to observe that these innovations insensibly tend to the general perfection.

The House of Commons has allowed a small portion of the public to be present at its sittings — about one hundred and fifty strangers can be accommodated in a separate gallery. Unhappily, this indulgence is precarious. That the House ought to be able to exclude witnesses in the cases of which we have spoken, is conceded; but at present it is only necessary that a single member should require the observation of the standing order, which being always in force, is irresistible.

As to the contents of the debates and the names of the voters, there are numerous periodical publications which give account of them. These publications are crimes; but it is to these fortunate crimes that England is indebted for her escape from an aristocratic government resembling that of Venice.

These publications would not have obtained this degree of indulgence, if they had been more exact. At one time, if a stranger were discovered in the gallery with a pencil in his hand, a general cry was raised against him, and he was driven out without pity. But at present, connivance is more extended, and short-hand writers, employed by the editors of the public newspapers, are tolerated.‡

Among the Lords, the regulations are nearly the same, but the tone is more moderate. No admission to strangers — (order 5th April 1707.) No publication of debates allowed — (order 27th February 1698.) It was, however, among them, that in our times the plan of indulgence which at present reigns was commenced.

This House has one custom, which gives to one set of its opinions a publicity of which no example is found in the other.

I refer to *protests*. These are declarations, made by one or many members of the minority, of the reasons for their dissent from the measures adopted by the majority, and inserted in the journals. These protests are printed and circulated, in opposition to the regulations. There results from this publication a singularity which ought to lead to consideration, if consideration were within the province of routine. It is, that the only reasons presented to the public in an authentic form, are those which are opposed to the laws.

The House of Lords, in permitting a portion of the public to attend its sittings, has

* 26th Feb. 1688, 15th Nov. 1705,
21st Nov. 1689, 26th Jan. 1709,
2d April 1690, and
31st Oct. 1705, 16th March 1719.

† All the papers published by the House of Commons are now allowed to be sold (1838.)—*Ed.*

‡ They have in the present House of Commons a gallery appropriated to themselves (1838.) —*Ed.*

rendered this favour as burthensome as possible. There are no seats. The first row of spectators intercepts the view, and injures the hearing of those who are behind. Some of the more popular members have at different times proposed to give the public more accommodation; but the proposition has always been refused by the majority of their colleagues, either from considering that a painful attitude is more respectful, or from an absolute horror of all change.*

CHAPTER III.

OF THE PLACE OF MEETING AND ITS DEPENDENCIES.

§ 1. *Of the Building suitable for a numerous assembly.*

MAGNIFICENCE of architecture in a building intended for a large political assembly, would be almost always injurious with regard to its utility. The essential points to be considered are —

1. Facility of hearing for the members.
2. Facility of seeing for the president.
3. Personal convenience for the individuals;

And lastly, Fitness for the service.

If any of the seats are so distant that the voice with difficulty reaches them, attention being rendered painful, will not be long sustained. The same distance will deprive one part of the assembly of the inspection of its president, and from this cause alone may give rise to habitual disorder.

Besides, those who do not hear are obliged to decide upon a borrowed opinion. It was thus that the great popular assemblies, in the ancient republics, were necessarily subjected to the direction of two or three demagogues.

The difficulty of making themselves heard may also drive from the service the individuals of greatest ability, if the strength of their lungs be not proportioned to the space that their voice is required to fill. Demosthenes might have been obliged to give way to Stentor. The first quality required would no longer be mental superiority, but a physical advantage, which, without being incompatible with talent, does not necessarily imply it. The presumption is even on the other side, and in favour of the feeble and valetudinary individual, — inaptitude for corporeal exercises being partly the cause and partly the effect of a studious disposition.

A form nearly circular, seats rising amphitheatrically above each other — the seat of the president so placed that he may see all the assembly — a central space for the secretaries and papers — contiguous rooms for committees — a gallery for auditors — a separate box for the reporters for the public papers; — such are the most important points. I do not enter into detail respecting the salubrity of the hall and its adaptation for the service. I only add, that a hall well adapted to all these objects would have more influence than would at first be suspected, in securing the assiduity of the members, and facilitating the exercise of their functions.

§ 2. *Table of Motions.*

Reference is here made to a very simple mechanical apparatus for exhibiting to the eyes of the assembly the motion on which they are deliberating. The mere reading of a motion can only impart an imperfect and fugitive acquaintance with it. There is no other method for really presenting it to the minds of the members of an assembly, beside that of presenting it to their eyes.

A general idea of this table only will be presented here. We may suppose a gallery above the president's chair, which presents a front consisting of two frames, nine feet high

---

* By the French constitution of the year 1814, it was directed, that "all the deliberations of the Chamber of Peers should be secret."

I can discover no good reason for this secresy. If publicity be dangerous, it appears to me that there is least danger for the peers, who are the least exposed to the danger of popular ambition.

Non-publicity appears to me particularly disadvantageous to the peers. They require publicity as a bridle and a spur; as a bridle, because in virtue of their situation they are thought to have interests separate from the body of the people — as a spur, because their immoveability weakens the motives of emulation, and gives them an absolute independence.

I suppose that the Chamber of Peers is considered as being, or about to become, eminently monarchical, as being the bulwark of royalty against the attacks of the deputies of the people. But in this point of view, is not the secresy of their deliberations a political blunder? Public discussion is allowed to those who by the supposition are enemies of the royal authority, or at least too much inclined to democracy; and those who are considered the hereditary defenders of the king and his dominion, are shut up to secret discussion. Is not this in some manner to presume that their cause is too feeble to sustain the observation of the nation, and that to preserve the individuals from general disapprobation, it is necessary they should vote in secret?

When a proposition in the Chamber of Deputies has obtained great popular favour, is it not desirable that the arguments by which it has been opposed should be known? that the body which has rejected it should have the right of publicly justifying its refusal? that it should not be exposed to the injurious suspicion of acting only with a view to its own interest? that it ought not to be placed in so disadvantageous a position in the struggle which it has to sustain? The body which speaks in public, and whose debates are published, possesses all the means of conciliating to itself numerous partisans, whilst those who deliberate in secret can only influence themselves. It would therefore seem that this secresy, so flattering to them, had been invented as a means of taking from their influence over opinion, more than was given to them in superiority of rank.

by six feet wide, filled with black canvas, made to open like folding doors; — that this canvas is regularly pierced for the reception of letters of so large a size as to be legible in every part of the place of meeting. These letters might be attached by an iron hook, in such manner that they could not be deranged. When a motion is about to become the object of debate, it would be given to the compositors, who would transcribe it upon the table, and by closing the gallery, exhibit it like a placard to the eyes of the whole assembly.

The utility of this invention, in its most general point of view, consists in so arranging matters that no one could avoid knowing upon what motion he ought to vote.

It is true, that what is of most importance to be known, is the *sense* of a proposition, and not its *tenor* — the spirit rather than the letter. But it is only by a knowledge of the letter that we can be sure of the spirit — a mistake in only a single word may entirely change the purport of a discourse: when the words are no longer present to the memory, we are in danger of falling into mistakes — a danger which it is a folly to incur, when it may be avoided by so simple and infallible a method.

There is not a moment in the course of a debate, in which each member has not occasion to know the motion, and to be able to consult it, either for making a correct application of what he hears, or for the purpose of taking an active part in the discussion. This knowledge is of the first importance to him, whether he act as a judge, by giving his vote — or as an advocate, by speaking for or against it.

In the first place, with respect to those who listen, nothing could be more agreeable and useful to them than this table of motions. Everything which relieves the memory, facilitates the understanding — there is much less doubt about the meaning, when there is none about the words. Upon the simple enunciation or reading of a motion — all those who have been distracted — all those who readily forget — all those who are slow in understanding, — are necessarily ignorant of the subject of debate, or obliged to apply to others for information. Hence arise irregular movements, reciprocal interruptions, confusion, and noise.

In the next place, as to those who speak, the utility of this table is still more clear. If the motion be of a certain length, it requires for its recollection an effort of memory, which distracts the attention at a moment in which there is a necessity for employing it altogether in another manner. There ought not to be a necessity of seeking for words when there is already too much to do in seeking for arguments: the hesitation occasioned by such a search, disturbs the current of the thoughts.

But besides, this effort of memory is often inefficacious. Nothing is more common than to see orators, and even practised orators, falling into involuntary errors with respect to the precise terms of a motion. If this be not perceived, an incorrect judgment is the result of the error: if it be perceived, the protests against it produce either apologies or disputes, and thence loss of time in accusations and defences.

The table of motions would contribute in many respects to the perfection of the debate. We have seen that it would preserve the orators from involuntary errors: it would be no less serviceable to the assembly as a security against intentional false misrepresentations—against insidious representations, by which sentiments are imputed to an antagonist which do not belong to him. This defect of candour springs from the same principle as calumny, which hopes that some portion of the reproach with which it asperses will not be wiped away. The individual who practises this meanness is screened by the difficulty of distinguishing his false representation from involuntary error. Remove this difficulty, and the temptation to be guilty of the meanness will be removed also.

Digressions are another inconvenience in debates: they often arise from the weakness of the mind, which without intending it, loses sight of the point with which it ought to be engaged. But when the orator forgets his subject, and begins to wander, a table of motions offers the readiest means for recalling him. Under the present régime, how is this evil remedied? It is necessary for a member to rise, to interrupt the speaker, and call him to order. This is a provocation — it is a reproach—it wounds his self-love. The orator attacked, defends himself; there is no longer a debate upon the motion, but a discussion respecting the application of his arguments. The unpleasantness of these scenes, when they are not animated by the spirit of party, leads to the toleration of a multitude of digressions, experience having proved that the remedy is worse than the disease; whilst as to the president, although it be his duty to prevent these wanderings, his prudence leads him to avoid giving frequent and disagreeable admonitions, and entering into altercations which might compromise his dignity or his impartiality.

But if we suppose the table of motions placed above him, the case would be very different. He might, without interrupting the speaker, warn him by a simple gesture; and this quiet sign would not be accompanied by the danger of a personal appeal. It would be a sedative, and not a stimulant—a suggestion, and not an accusation; it would be the act, not of an adversary, but of a judge. The member would not be called upon to stop — would not be required to make a painful submission and avowal of error; he would

only have, in continuing his speech, to return to the subject of discussion; and he could not be ignorant that the sign of the president was an appeal to the assembly, the attention of which had been directed to him.

In conclusion, it may be observed that this table would give great facility in the production of good amendments. If a simple reading be sufficient for correctly seizing the spirit of a motion, it is not sufficient for giving attention to all its terms. When observations are to be made upon style, we must not trust to memory: it is desirable that the writing should be under the eye—that it may be considered in many points of view— that the microscope of attention may be applied to all its parts; and there is no other method of discovering the imperfections of detail. This kind of criticism is a peculiar talent, in which individuals are formed to excel who often do not possess any of the gifts of oratory. The profound grammarian is more useful than is generally thought to the legislator.

This table would possess a further merit, if it should only procure for the assembly the services of one clever man, who had been discouraged by a defect of memory, and retained by this defect in a state of inaction. It is well known that the two most important faculties of the mind — judgment and invention — are often very strong in those individuals who have very weak memories, especially with regard to words. With respect to talent, as well as virtue, the smaller the service required, the less the danger of its being wanting.

It may perhaps be said, that the printing of the motions before the debate, would nearly accomplish the same object, and would supply the place of this table.

But in the course of a debate, how many accidental and unforeseen motions may be made! — how many amendments which there is not time to print! It may also be observed, that a paper to be read, to be consulted, does not afford to the hearers, or the speaker, the same facility as a table which remains immovably before their eyes. It is not necessary continually to stoop for the purpose of listening or speaking, but the eye glances over the lines of the table without interruption. And besides this, the great utility of the table, the strength which its gives to the regulation against useless digressions simply by means of an admonitory sign, is an advantage not to be obtained by printing the motion.*

* I proposed this plan of Mr. Bentham's to many of the members of the Constituent Assembly of France. They considered it very ingenious, and even very useful, but that it could not be carried into effect; because of the rapidity of the motions and operations of the assembly. During many months I attended all its sittings with the greatest assiduity; and I cannot forget how often I have experienced difficulty in ascertaining what was the subject of deliberation: I have asked many members who were not able to inform me. When even the motion was known, it was only in its general object — never in all its details and in its precise terms. There were consequently continual disputes about words: a momentary absence, a momentary abstraction, a late entry, were sufficient to produce entire ignorance of the subject of debate. Individuals sought to instruct themselves by conversations, which formed the assembly into groupes, and gave rise to little particular debates. A multitude of motions thus presented passed as spectres, and were only half known. Hence the indolent members either went away without voting, or voted upon trust; that is to say, not being able to form an opinion, they abandoned themselves to that of their party.

These observations may appear but trifles, but the sum of these trifles produces great effects. A torrent is composed of drops of water, and a mountain of grains of sand.—*Note by Dumont.*

§ 3. *Description of a Table of Motions.*

The plan here pointed out may serve for a first attempt: but the easier the mode of execution, the less important are the details.

Frames. — They may be made like two folding doors. They should be filled with canvas, stretched so as to present an even surface, not sinking in the middle.

Size of the letters. — This would depend upon the size of the place of meeting; — a black ground, the letters gilt;—a strong light thrown upon the table; — the form of the letter rather oblong than square.

Method of fixing them. —The letters being made like a button, should have a hook, by means of which they might be fixed with the greatest ease. The regularity of the lines might be secured by a thread in the cloth.

Composition of the table. — The two folding leaves turn upon their hinges like a door. The compositors whilst at work are visible to the assembly (which will secure their diligence and emulation.) The two leaves closed together, will present the appearance of two pages of an open book.

Amendments. — These might be exhibited upon a separate table, placed immediately beside the others, with a reference which would direct the eye to the part of the original motion which it was wished to amend, and a word at the top of the table, which should simply indicate that the amendment is *suppressive*, *additive*, or *substitutive*.

Multiplication of tables.—There might be an assortment of tables, upon which all the known motions might be previously prepared, and thus be made to succeed each other rapidly.

Contents of the Table of Motions.

Suppose that each frame is nine feet high by six wide, and the letters one and a half

inch by three quarters of an inch, the two leaves of the table would contain more than four ordinary octavo printed pages. This may be ascertained by calculation.

At fifty-two feet distant, I have found in a church that the table of the decalogue was perfectly legible for ordinary eyes, when the letters were three quarters of an inch high.

Composition. — The labours of the compositors may perhaps be accelerated by what is called the *logographical* principle, which consists in composing not with letters, but with entire words.

By the multiplication of tables, a composition which was too long to be presented all at once to the eyes of the assembly, might be presented in parts. A project of a law, for example, whatever was its extent, might be previously prepared, and the tables shifted, without suspending the labours of the assembly.

But this plan has its limits; — that is to say, there are cases and circumstances which would prevent its being employed on account of time and space: these limits do not, however, furnish any argument against its utility upon all occasions on which it can be employed. This utility is so great — the inconveniences of the present plan are so manifest, that one might be astonished that this method had not been thought of before: but in these affairs it is not proper to be astonished at anything. Under the auspices of routine, barbarism gives law to civilization, and ignorance prevails over experience.

§ 4. *On a Table of Regulations.*

When good rules are established, it still remains to make arrangements for facilitating their execution — for making them known. A law can have no effect except as it is known.

The regulations of the assembly, reduced into the form of a table, and readable from all parts of the place of assembly, ought to be placed by the side of the president.

If they are too voluminous, the tables ought to be multiplied; but the essential points ought to be collected together in the principal table.

In every large political assembly, nothing is more frequent than an appeal to the regulations, either for attack or for defence. The contravention consumes time—the correction consumes still more. The rules are always as if they were non-existing for one part of the assembly. The new members are but little acquainted with them; and they are not always present to the minds of the most experienced veterans. Such, at least, is the state of things in the British parliament; — and it cannot be otherwise, because the regulations, far from being exposed to the eyes, only exist by tradition, and are confided only to the keeping of a treacherous memory.

A small table would not answer the end: a large table is an object of study in every moment when the attention is vacant. The least deviation becomes sensible; and hence deviations become rare; for rules are rarely transgressed when they cannot be transgressed with impunity, — when the law which condemns is before your eyes, and the tribunal which judges you at the same moment, no one will be more tempted to violate it than he would be tempted to steal red-hot iron. Procedure, which moves on other occasions with the pace of the tortoise, is in this case rapid as the lightning.

General laws, whatever may be done for their promulgation, cannot be made universally notorious. But particular laws made for one assembly may be constantly visible within it. The method is so easy, it cannot be said to be unknown. There is not a club in England which has not its regulations exhibited in its place of meeting. There is the same foresight in gaming-houses. But the bitter reflection often recurs, that the wisdom displayed in the conduct of human affairs is often in the inverse proportion of their importance. Governments have great progress to make before they will have attained, in the management of public matters, to the prudence which commonly conducts private affairs. The cause may be easily pointed out, but not the remedy.

CHAPTER IV.

OF WHAT CONCERNS THE MEMBERS PRESENT AT A LEGISLATIVE ASSEMBLY.

§ 1. *Of the utility of a Distinctive Dress for Members.*

THE establishment of a particular dress for the members during the hours of sitting, is one of those points upon which it would not be proper to wound national customs. The object, however, is not altogether so unimportant as might be thought at the first glance.

1. A particular dress serves to distinguish the members from the spectators: it may prevent the usurpation of their privilege.

2. Such a dress might attain the end of a sumptuary law, without having its rigour. This apparent equality would defend the poor man of merit from a disadvantageous comparison with the pride of fortune.

3. Such a dress tends in another manner to place the individuals upon a level, by diminishing the disadvantages of those who have to strive against any bodily defect.

4. It produces a certain impression of respect upon the spectators, and places the members themselves in a more distinguished situation — two causes which equally tend to

the maintenance of order, and the preservation of decency.

5. In the course of a debate, when parties are nearly balanced, and when intrigue or corruption may be apprehended, the peculiar dress may serve to detect the proceedings of the members, and to signalize what passes among them. Every communication among them becomes more manifest, and attracts the public attention.

This method, I allow, is not of great force; but if it be possible, without inconvenience, to throw one additional grain into the scale of probity, it ought not to be neglected.

6. In a popular tumult, such as every political assembly is exposed to see arise around it, a dress which announces the dignity of him who wears it, may dispose the people to respect, and give the members more influence in calming the storm.

7. If the tumult runs so high as personally to menace certain members of the assembly, the simple act of laying aside their peculiar dress would favour their retreat. The Chancellor Jefferies, so noted under James II. for his bloody decisions, succeeded, by laying aside the marks of his dignity, in eluding for a time the fury of the populace.

These different reasons are not equally applicable to all political assemblies.

§ 2. *Of the manner of placing the Members, and of a Rostrum for the Orators.*

In a numerous deliberative assembly, there ought not to be any predeterminate places. Every one ought to take his place as he arrives.

This free arrangement is preferable to a fixed order, for many reasons; and first, because it tends to produce a debate of a better kind.

The members of the same party ought to possess every facility for concerting their operations and distributing their parts. Without this concert, it is impossible that the arguments should be presented in the most suitable order, and placed in the most advantageous light. It is only by a continual correspondence among the members themselves, that they can prevent a multitude of useless operations, delays, contradictions, repetitions, inconsistencies, and other incidents, of which the common tendency is to interrupt that unity of plan which is necessary in conducting business to its termination. In this respect, party interests are the same as those of the public. It is necessary for the public good that each party should plead its cause with all its force — should employ all its resources; since truth only has everything to gain in the concussion.

Consultations held previous to the assembly, cannot supply these little consultations at the moment. One particular observation, one new proposition, may give a new aspect to affairs, and render necessary a change of measures. The most consummate foresight cannot anticipate all the incidents which may arise in the course of a discussion. It is here as in a battle,—the best plan previously formed cannot supersede the necessity of occasional orders suggested at the instant by the events of the day.

The English practice is conformable to this theory. The arrangement being free, the two parties naturally place themselves upon the two sides of the House. The first bench upon the right of the Speaker, which is called the Treasury Bench, is occupied by the ministers and other official persons; but this is a matter of courtesy, and not of right. The first bench on the Speaker's left, is that occupied by the principal persons of the opposition party.

There is one single exception to this freedom of places — an exception, honourable in principle, but too rare in practice to be productive of inconvenience. "It is commonly understood," says Mr. Hatsell, (Vol. II. p. 194,) "that members who have received the thanks of the House in their place, are entitled to that place whenever they come to the House, at least during that parliament; and it is generally allowed them by the courtesy of the House."

In the House of Lords, different benches are appropriated of right to the different orders, — one to the Bishops, another to the Dukes, &c.; but these appropriations are but slightly observed.

The States of Holland and West Friesland used to assemble in a hall, in which, to judge from appearances, the fixation of places was most strict. Each town had its bench, or its part of a bench The places being all occupied, no one could change without occasioning some derangement. Whether any inconveniences were the result or not, is a matter of conjecture, and nothing more. Since everything passed in secresy in these Dutch assemblies, they never understood the essential connexion between liberty and publicity which support each other.

This free arrangement is favourable to equality, in a case in which equality, not being hurtful to any one, is justice. To prevent disputes concerning precedence, those vain contests of etiquette which have so often been the principal object of attention in great political assemblies, would be in itself a great good. To correct the disposition itself which attaches importance to these distinctions, is a still greater advantage. The mode by which this scheme of graduated injuries is carried into effect, is begun by supposing that one place is preferable to every other, and that the occupation of it is a mark of superiority. This system of insults, which goes on regularly increasing from the last to the first place,

is what is called *order, subordination, harmony;* and these honorary distinctions—that is to say, these gradations of affronts—given and received with privilege, are commonly regarded with more respect, and defended with more obstinacy, than the most important laws.

This, then, is one cause of contention and trifling, which ought to be excluded from a political assembly. Distinction of places, and disputes concerning rank, ought to be unknown there. *Merita sua teneant auctores, nec ultra progrediatur honos quam reperiatur virtus.*

In England, a quarrel respecting precedence is sometimes heard of, but it is only in assemblies for amusement; most generally among females, and only among themselves. If these disputes reach the men, they treat them as a joke.

Ought there to be a place assigned for those who speak?

Before answering this question, two points ought to be determined, — the form and size of the place of meeting, and the number of members.

In a numerous assembly, the speaker is best heard when he speaks from a tribune, placed near the centre and visible to all. The debate, more easily followed, causes less fatigue. Those who have weak voices, are not obliged to strain themselves that they may make themselves heard at the extremities; and this is a consideration which ought not to be disregarded in a political assembly, in which there ought to be a large proportion of aged and studious men.

Regularity is better preserved. If every member may speak from his place, there is at least a danger of confusion, and it is more difficult for the president to prevent irregular interruptions. The necessity of going to the tribune, stops a crowd of insignificant and precipitate proposals. It is a deliberate act, which an individual will hardly perform without having first considered what he intends to say: it makes him conspicuous, and he must feel that it is ridiculous to fix attention upon himself, when he has nothing to say wherewith to repay that attention.

Besides, when a tribune is established as the place from which to speak, all the rest of the assembly ought to be obliged to be silent. If any one speak out of the privileged place, he commits an obvious irregularity, and may immediately be called to order.

The tribune presents also a certain advantage connected with impartiality. If the assembly, according to the disposition of all political bodies, form itself into two parties, each naturally tends to station itself in a certain portion of the place of meeting; and if each one speak from the midst of his party, it is known beforehand on which side he is going to speak: but there are always some men more or less impartial and independent. It is well, therefore, to require all the members to speak from a tribune, which being the same for all, relieves the individual from the association of ideas which would connect him with a given party. It must, however, be acknowledged, that this method is not perfectly effectual, because all the members know each other; but it is well calculated to have this effect with the public who listen to him, and who would be thus called upon to judge the speaker by what he says, and not by the place from which he speaks.

It may be objected, that this is a restraint, and that this restraint may deprive the assembly of the information possessed by a timid individual, who would fear to push himself forward upon the scene in too marked a manner.

It may be said, that a loss of time would result from it, if, for a single word, a short explanation, a call to order, it were necessary to cross the house, and to ascend the tribune.

These two objections are of very little value. The first supposes a degree of timidity which is soon overcome by use: a practised speaker will speak from one place as well as another; but he will speak best when he is best heard: he will speak more freely, or he will speak with less effort.

As to short explanations, the president might permit a member to make them without quitting his place. These are minutiæ, with respect to which a routine of detail will readily be formed.

The two houses of the British parliament have no tribune, and no great inconvenience results from the want. It must be observed at all times, that these assemblies are rarely numerous, that there are few habitual orators, and that those almost always occupy the same places. But when a member speaks from a distant seat, he speaks under manifest disadvantage. He is less heard by the assembly, and often not heard at all in the gallery. There are few important debates in which the reporters for the public papers are not obliged to omit certain speeches, of which only scattered sounds and broken phrases have reached them.

§ 3. *Of the hours of business, fixed or free.*

It is very necessary to have a fixed hour for the commencement of business.

But is it proper to have a fixed hour for breaking up the sitting, although in the middle of a debate? There ought to be a fixed hour, or very nearly so; but it should be admissible to finish a speech which is begun.

This regulation appears to me very reasonable, and more important than would be imagined at the first glance.

With reference to the personal convenience of individuals, this fixation of the hour is useful to all, and necessary for the infirm and the aged. An inconvenience which may deter feeble and delicate persons from this national service, is worthy of consideration.

But the principal reason is, that there is no other method of securing to each subject a degree of discussion proportioned to its importance. When the duration of the debate is unlimited, the impatience of those who feel themselves the strongest, will lead them to prolong the sitting beyond the term in which the faculties of the human mind can exercise themselves without weakness. The end of the debate will often be precipitated, if it be only from that feeling of uneasiness which results from fatigue and ennui.

In those circumstances in which parties are most excited — in which each of them, awaiting the decision, would be most desirous of exceeding the ordinary time — it is then that the rule would be particularly useful: by interrupting the debate, it favours reflection, it diminishes the influence of eloquence, it gives to the result a character of dignity and moderation.

1. But it will be said, delay results from it. Those who dread being found in a minority will prolong the debates, in the hope that another day may give them some advantage.

I think that a systematic plan of delay, founded upon this law, is but slightly probable. The individual who should speak merely to consume the time, would do too much injury to himself. To talk to no purpose, in an assembly in which are heard the murmurs of indignation, and before the public which judges you, is a part which demands a rare degree of impudence; and, moreover, it would be necessary to suppose that a great number of individuals should enter into this disgraceful conspiracy, in order to make it succeed.

2. It may perhaps be said, that it opens a door to intrigue — to that kind of intrigue which consists in personal solicitations to the members, in the interval between two sittings.

But this objection amounts to nothing. There is no greater facility for solicitation after the first debate, than there was before it: there is even less; for those who have announced their opinions, would fear to render themselves suspected by so sudden a change of opinion.

If this objection were solid, it would lead to the conclusion that everything should be unpremeditated in political assemblies — that the object of deliberations should not be previously known, and that the only mode of guaranteeing their integrity is to take them unawares, and to separate them from all communication from without.

English practice.

There is a fixed hour for beginning the sittings; there is none for their termination. Hence, debates which excite great interest have sometimes lasted from twelve to fifteen hours, and even beyond that.

The inconveniences which result from this practice are sufficiently numerous; but there is no danger, at least with regard to *projects of laws*, because the regulations secure certain delays. Every bill must be read three times, besides being discussed in committee. Two adjournments are therefore necessary, and there may be a greater number.*

The sittings do not generally commence before four o'clock, and even later. This arises from the composition of the assembly. The ministers are engaged in the morning in their offices; the judges and lawyers in the courts of justice; a great number of merchants are necessarily occupied with their business. The different committees of the house require the attendance of a multitude of persons, and this service, in a large city, can only be conveniently rendered during the day.

These circumstances have caused evening sittings to be preferred, notwithstanding the inconvenience of prolonging the debates far into the night — of often producing precipitation, from the desire of concluding them — of affecting the health of delicate persons, and of exposing this public service to the formidable concurrence of all the dissipations of a large city. If the ancient usage of assembling in the morning were re-established, this change alone would necessarily change the composition of the House of Commons.

§ 4. *Duty of attendance — Mischiefs resulting from non-attendance.*

I begin with two propositions: — the first, that in every legislative assembly the absence of the members is an evil; — the other, that this evil is sufficiently great to justify a law of constraint.

The inconveniences may be ranged under six heads: —

1. Facility of prevarication.
2. Occasion of negligence.
3. Admission of less capable individuals.
4. Inaction of the assembly, when the number requisite for the validity of its acts is not present.
5. Danger of surprises.

* The Roman senate could not begin any business before the rising of the sun, nor conclude any after its setting. This was a precaution against surprises; but the English method is much preferable. Demosthenes caused a decree to be passed by surprise, after the party opposed to his had retired, believing the sitting finished. Such an event could not have happened in the British senate.

6. Diminution of the popular influence of the assembly.

1. *Facility of prevarication.*—There is more than facility—there is entire security, not for complete prevarication, but for demi-prevarication. Suppose a measure so bad that a deputy, if he were present, could not in honour refrain from voting against it. Does he fear to offend a protector, a minister, or a friend? He absents himself: his duty is betrayed, but his reputation is not compromised.

Every voter produces by his vote two equal and distinct effects: he deprives one party of his vote, and gives it to the other. The absent produces only one of these effects, but there is always half the mischief.

2. *Negligence.*—Is one obliged to vote upon all questions? It is natural to pay some attention to them, to make one's self acquainted with them, lest we become absolute ciphers in the assembly. But this feeling of honour does not exist when individuals may freely absent themselves. They will abandon their duty, rather than compromise themselves—they will give themselves up to indolence; and the more they neglect their business, the less will they be qualified to engage in it.

3. *Admission of less capable individuals.*—So soon as an employment becomes a source of consideration and of power, without imposing any restraint, it will be sought after—will be bought and sold, by men who have neither inclination nor power to render themselves useful in it.

Such places will often become the appanage of fortune and dignity; but if it be requisite assiduously to discharge their functions, the little motives of vanity will not outweigh the bonds of labour. We shall only find among the candidates those who discover, in these public duties, some particular attractions;—and though inclination for an employment does not prove talent for its discharge, there is no better pledge of aptitude for the labour than the pleasure which accompanies it.

4. *Inaction for want of the number required.*—This evil is connected with the preceding. So soon as the places are occupied by men who only love the decorations they afford, they will neglect to attend, at least upon ordinary occasions. It will become necessary to fix a quota for forming an assembly, and this expedient will itself produce many days of inaction.

5. *Danger of surprises.*—We may consider as a surprise, every proposition the success of which has resulted from absence, and which would have been rejected in the full assembly.

6. *Diminution of influence.*—Public opinion in a representative government is naturally disposed to conform itself to the wish of the assembly, and requires only to know it. But will the wish of the whole assembly be the wish of that portion from which the decision emanates? It is this which becomes more problematical, in proportion as this part is less than the whole. Is the part absent greater than that which is present? The public knows not to which to adhere. In every state of the case, the incomplete assembly will have less influence than the complete assembly.

§ 5. *Means of insuring attendance.*

I confine myself here to the general idea. The first of these means would consist in requiring of each member a deposit, at the commencement of each quarter, of a certain sum for each day of sitting in the quarter; this deposit to be returned to him at the end of the term, deduction being made of the amount deposited for each day for every day he was absent.

If the members receive a salary, this salary should be placed in deposit, subject to being retained in the same manner.

This retention should always take place without exception, even in those cases in which there are the most legitimate excuses for absence.

This plan may at first appear singular, but this is only because it is new. This, however, is not a feasible objection to it, if it be particularly efficacious. It belongs to that class of laws which execute themselves.* If instead of this retention you establish an equal fine—there then becomes necessary an accuser—a process, a judgment: on the other hand, the deduction is not liable to uncertainty—it operates after a simple calculation, and does not bear the character of a penal law.

Emoluments are the price of service,—Is there any ground of complaint, if they are attached to the rendering of service?

If the employment be of a kind to be undertaken without salary, the chance of losing a part of the deposit ought to be regarded as the price of the place.

To admit any cases of exception, would be to alter the nature of this instrument. Its essence consists in its inflexibility—admit excuses, you admit fraud, you admit favour; refusal to receive them would become an affront,—you would substitute a penal for a remuneratory arrangement. But it may be said, in case of sickness, is it right to add to this natural misfortune, another factitious evil? Yes, upon so important an occasion. The professional man, the artisan, are subject to the same losses. At the price of this single inconvenience, contraventions without end are prevented, the public service is secured, which could not be secured by any means more easy and manageable.

This expedient itself will not suffice. It is necessary to add to it a coercive punishment; for it is always necessary to come to this, to

* See *Rationale of Reward*, Book I. Ch. IV. p. 198.

give effect to the laws. I only propose one day of arrest for each contravention, it being always understood that every legitimate excuse for absence is admissible as a ground of exemption from this punishment.

This is necessary for constraining a class of persons upon whom the loss of the deposit would have only an uncertain influence.

The rich are often led by vanity to make pecuniary sacrifices: they would not be indisposed to acquire an honourable office, even though it were expensive, provided they were not compelled to attend to its duties; they might even glory in the infraction of a rule when the punishment was only a pecuniary fine. Hence there would perhaps be formed two classes in the assembly — those who were paid for their functions, and those who paid for not fulfilling them; and as wealth sets the fashion, it might happen that a kind of degradation would be reflected upon the useful and laborious class.

A punishment is therefore necessary, which should be the same for everybody — a slight but inevitable punishment. It is true that excuses would be admissible; but it is not to be expected that, for the purpose of avoiding the inconvenience of one day's arrest, any one would compromise his honour by a lie.

These means should also be strengthened by a register, in which every case of absence should be specified. The name of the absent member should be inscribed therein, with the date of his absence, in order to indicate the sitting or sittings from which he was absent, the excuses he has made, or the days during which, he was subject to arrest. This memorial should be printed at the end of every session.

The power of granting leave ought not to exist. This power would soon reduce the demand which was made of it to a mere formality.

If this regulation had existed in the Roman senate, the letters of Cicero would not have contained so many bitter complaints against those senators, who left him to strive alone against corruption and intrigue, that they might enjoy their pleasures in voluptuous repose, or rather that they might avoid compromising themselves, and might prevaricate without danger.

§ 6. *British practice in relation to attendance.*

In order to perceive how far this abuse of absenting themselves may be carried, it is only necessary to consider what happens in England.

In the House of Commons, out of 658 members, the presence of 40 is required to constitute a house, and often this number is not found. Its annals offer few examples of a sitting in which one-fifth of the whole number was not wanting. An opinion may hence be formed of the ordinary attendance. The two parties in this assembly are composed of persons to whom their parliamentary functions are only a secondary object. Setting aside the official personages, and the heads of the opposition who seek to succeed them, there remain lawyers, merchants, and men of the world, who, unless they have a particular interest in the question, only attend the house as a show, for the purpose of varying their amusements. At the invitation of the slightest pleasure they leave the house. It is these persons who in general compose the class whose votes are the object of dispute to the two parties, and to whom they address their pleadings.

Is this the fault of individuals? No; since in this respect as well as in every other, men are what the laws make them to be.

The laws which exist for the prevention of this abuse are well calculated to be inefficacious. In ancient times there was a statute of fines: first, five pounds; afterwards ten, and afterwards forty, &c. This mode is gone by — there remains only imprisonment in the custody of the sergeant-at-arms (this implies a sufficiently heavy ransom under the name of fees.) But even this punishment scarcely exists except as a threat. It cannot take place but upon a call of the house, as if a constant duty ought only to be performed at certain periods; and in the case of a call of the house, any excuse, solid or frivolous, vague or particular, is sufficient to prevent the infliction of this punishment. It is not possible to expect that the tribunal will be severe, when all the judges are interested in the contravention of the laws. Neither can it be expected that a political body will make efficacious laws for the prevention of abuses, in the continuance of which each member finds his account, unless compelled to do so by the force of public opinion.

It must be acknowledged, that this habitual negligence, which has destroyed every other assembly, has its palliatives, which diminish its evil effects, and which are peculiar to the parliamentary régime.

The division into two parties, has insensibly led them to allow themselves to be represented by a certain portion of each. Each portion is as the whole. In questions of importance — that is to say, of an importance relative to the party — the chiefs give the signal, and the members come up in mass.

There is little danger of surprise, because the principal motions are announced beforehand, and because all the ministerial measures pass through many stages, upon different days. If the decision taken by the small number be contrary to the wish of the majority, they assemble in force the day following, and abrogate the work of the previous day.

§ 7. *Of the practice of requiring a certain number to form a House.*

With good regulations against absence, there would be no necessity for a recurrence to this instrument.

Its principal use is to contribute indirectly to the compelling an appearance. Is the fixed number deficient? Business is retarded; public opinion is thought of; an uproar is dreaded. Those who direct the assembly are obliged to take pains to obtain the attendance of the requisite number, and rigorous methods have an excuse if the negligence become extreme.

This fixed quota is the last expedient to which recourse should be had with this view; since the suspension of business oftentimes produced by it, is nothing more than a punishment inflicted upon the constituents, when the representatives only are in fault.

It appears at first extremely singular, that the power of the whole assembly should be thus transferred to so small a portion. It arises from the circumstance, that abstraction made of intentional surprise, nothing more is to be feared from a fraction of the assembly than from the total number. Allowances being made for the differences of individual talents,—as is the whole, so is each part.

If there be no disposition on the part of the whole to prevaricate, there is no reason to attribute this disposition to any portions of the whole. Besides, responsibility with regard to the public is always the same.

It might be apprehended, that where parties existed, those who found themselves one day in superior force, would abuse this superiority to the production of a decree contrary to the will of the majority. But this danger is not great; for the majority of to-morrow would reverse the decree of the past day, and the victory usurped by the weaker party would be changed into a disgraceful defeat.

The general advantage, in case of absence, is altogether on the side of the executive power. It is this which is always in activity —it is this which has all the particular means of influence for securing the assiduity of its partisans.

§ 8. *Visitors — mode of admission.*

We have seen, in the chapter on *Publicity*, the reasons for admitting a certain portion of the public to the sittings of the assembly, and we have pointed out the cases of exception. The number admitted ought to be as great as possible, without injury to the facility of speaking and hearing—a principal consideration, which reduces the size of the place of assembly to dimensions much less than those of an ordinary theatre; since there ought not to be required of a deputy of the people, the strength of voice and the declamation of an actor.

The experience of France has shown other dangers, arising from the number of spectators equalling or exceeding that of the assembly. It is true, that these dangers might have been prevented by a severe police; but this police is more difficult to be maintained, in proportion as the number is large. Besides, there are some men, who, surrounded with the popularity of the moment, would be more engaged with the audience than with the assembly; and the discussion would take a turn more favourable to the excitements of oratory, than to logical proofs.

It would be proper, in the distribution of these places, to allow a particular seat for the short-hand writers; another to students of the laws, who would find there a school and models; another for magistrates, whose presence would be doubly useful. It would be proper also to keep certain places in reserve, at the disposal of the president, for ambassadors and strangers, who would carry from this exhibition advantageous impressions respecting the nation, which would fructify in noble minds. Cyneas left Rome more impressed with respect by his view of the senate, than by all the magnificence of the court of Persia.

With regard to places in the public seats, they should be paid for. This arrangement is most favourable to equality, in a case where equality is justice. If you allow them to be taken by the first comers; when there is a large concourse, many persons will be disappointed. The strongest and the rudest will have all the advantage in the struggle.* The gallery would be filled with spectators, who would be the least profited by the debates, and who have the most to lose by the cessation of their labours. Their number, and their want of education, would often lead them to brave the anger of the assembly, and to disturb its deliberations by their approbations or their murmurs.

If the granting of tickets of admission were in the hands of the government, there would not be persons wanting who would accuse it of partiality and dangerous intention. There! they would say, the ministers have surrounded us with their creatures, in order to restrain our deliberations, &c.

This subject of discontent would be removed, by giving the tickets of admission to the members themselves; and I see only one objection to this: it would restrict the prerogative of publicity, instead of extending it, by making a common right degenerate into a personal favour, and thus opposing the principle of equality without any advantage.†

* It was for a long time a trade among the common people, to seize at an early hour upon places in the gallery of the National Assembly, for the purpose of selling them.

† All this is reconciled in England by an unauthorized but established custom. A small sum

A price of admission unites all the conditions. It is an imperfect measure, it is true, but it is the only possible one, of the value attached to this enjoyment. It is also a proof of a condition in life which guarantees a respectable class of spectators.

This plan, I acknowledge, is not a noble one; but the employment of the produce may ennoble it; whilst, as respects those witicisms which may be borrowed from the language of the theatre, they must be expected, and disregarded.

Ought females to be admitted? No. I have hesitated, I have weighed the reasons for and against. I would repudiate a separation, which appears an act of injustice and of contempt. But to fear is not to despise them. Removing them from an assembly where tranquil and cool reason ought alone to reign, is avowing their influence, and it ought not to wound their pride.

The seductions of eloquence and ridicule are most dangerous instruments in a political assembly. Admit females—you add new force to these seductions; and before this dramatic and impassioned tribunal, a discussion which only possessed the merits of depth and justice, would yield to its learned author only the reputation of a wearisome lecturer. All the passions touch and enkindle each other reciprocally. The right of speaking would often be employed only as a means of pleasing; but the direct method of pleasing female sensibility consists in showing a mind susceptible of emotion and enthusiasm. Everything would take an exalted tone, brilliant or tragical—excitement and tropes would be scattered everywhere; it would be necessary to speak of liberty in lyric strains, and to be poetic with regard to those great events which require the greatest calmness. No value would be put but upon those things which are bold and strong; that is, but upon imprudent resolutions and extreme measures.

Among the English, where females have so little influence in political affairs—where they seek so little to meddle with them—where the two sexes are accustomed to separate for a time, even after familiar repasts,—females are not permitted to be present at the parliamentary debates. They have been excluded from the House of Commons, after the experiment has been tried, and for weighty reasons. It has been found that their presence gave a particular turn to the deliberations—that self-love played too conspicuous a part—that personalities were more lively—and that too much was sacrificed to vanity and wit.

given to the doorkeeper of the gallery, introduces you into the gallery, as well as the order of a member.[a]

[a] This practice is now prohibited, by an order dated July 2, 1836, and no person is now admitted without a member's order.—*Ed.*

CHAPTER V.

OF THE PRESIDENTS AND VICE-PRESIDENTS BELONGING TO POLITICAL ASSEMBLIES.

§ 1. *Of the office of President.*[*]

RULES.

Rule 1. IN every political assembly, there ought at all times to be some *one* person to preside.

[*] The word *President*, I employ in preference to any other term which the English or any other European language offers as capable of being made to express the function I have in view.

To an Englishman, whose view was confined to his own island, and to the chief governing bodies in that island, *Speaker* is the word which would naturally first present itself. But the term Speaker exhibits the office of president no otherwise than as an appendage to a very different, and now frivolous function, of which hereafter, and of which latter only an intimation is given by this name;—and in relation to the business of debate, it has an incorrigible tendency to produce confusion: it confounds the president with any member whom there is occasion to mention as *speaking*. In the instance in which it is most used, viz. to denote the president in ordinary of the House of Commons, it involves a contradiction; the original propriety of the appellation having in this instance slipped away, and left absurdity in its place. In that House the Speaker, while he officiates as such, is the only person present who neither makes those speeches which all the other members make, nor has any right to do so. In this point of view, it lends countenance to a principle of etymology, generally cited as a whimsical one: *Speaker*, from not speaking; *ut lucus a non lucendo.*

Orator (orateur) is the word by which the English word *speaker* has been usually rendered in the general language of Europe. It is by the same word that the presidency of the three inferior orders of the Swedish diet is rendered in the same language. To the innocent improprieties chargeable on the word speaker, this adds a dangerous one. Oration means supplication;—supplication implies pliancy as towards the person to be addressed: the pliancy of the Swedish presidents as towards the person they had to address, has just[a] consummated the ruin of everything that ought to be dear to Sweden.

The word Chairman is free from the inconvenience attached to the use of the words *speaker* and orator; but it draws the attention to an idea too confined; as if it were necessary to the function that the person who performs it should sit in a chair, and that nobody else should. At times it may even bring up an improper and ignoble idea: several committees being about to sit, a voice is heard in the purlieus of the House of Commons, *Gentlemen, your chairmen wait for you.* Does *chairmen* here mean *presidents* or *porters?*

Marshal is the appellation by which the pre-

[a] Published 1791.

Rule 2. In a permanent assembly, that function is best provided for by a permanent president in chief, with substitutes of equal permanency, in such number, that in case of absence or disability, the place of the chief may at the instant be supplied.

The president ought to be permanent, not only that the embarrassment arising from multiplied elections may be avoided, but especially for the good of his office. If permanent, he will possess more experience, he will know the assembly better, he will be more conversant with business, and will feel more interested in managing it well, than an occasional president. The occasional president, whether he execute his office well or ill, must lose it. The permanent president, who will only lose his office if he discharge it ill, has an additional motive for performing all his duties well.

Rule 3. In the character of president, no more than *one* person ought to officiate at a time.

If there are two, whenever there arises any difference of opinion between them, there will be no decision. If there are more than two, they will form a little assembly, which will have its debates, which will uselessly prolong the business in hand.

Rule 4. But *two* persons at least, capable of officiating, *ought* to be present at *once*.

This rule is necessary, in order to prevent the assembly from being reduced to a state of inaction from the sickness, death, or absence of its president. The omission of so simple and important a precaution, announces so great a want of foresight, that it could hardly be thought that men would be guilty of it, if a striking example were not exhibited by one of the greatest and most ancient of political assemblies.

§ 2. *Functions, competent and incompetent.*

Rule 5. The functions that belong properly to a president, belong to him in one or other of two capacities: that of a *judge*, as between individual members; or that of *agent* of the whole assembly: — as judge, when there is a dispute for him to decide upon; as agent, where there is anything for him to do without dispute.*

Rule 6. As judge, a president ought in every instance, to be subordinate, in the way of appeal to the assembly itself, sitting under another presidence.

Rule 7. As agent, he ought in every instance to be subject to the *controul* of the assembly, and that *instanter*, as to everything transacted in the face of the assembly.

Rule 8. In neither capacity ought he to possess any power, the effect of which would be to give him a controul in any degree over the will of the assembly.

Rule 9. In a numerous assembly,† and in particular in a numerous legislative assembly, a president ought not to be a member; that is, he ought not to possess a right either to make motions, to take part in a debate, or to give a vote.

This exclusion is as much for his advantage as for that of the body over which he presides: —

---

sident is designated in the Polish diet; in one of the four orders which compose the Swedish body of that name; and in the provincial assemblies of the noblesse, instituted within these few years, throughout the Russian empire. This term, besides being unexpressive, is liable to objections of a much more serious nature. In the original German, it signified neither more nor less than what we call a hostler or groom — a servant having horses under his care. A horse being an animal of great importance to a barbarian king, to have the care of the king's horses was to be a great man. When not to be military was to be nobody, to be a man in the service of the king was to have a military command. Thus, by degrees, a command over horses has involved, as a matter of inferior consequence, a command over their riders; till at length the title of *marshal*, superior even to that of *general*, is come to denote, in most countries of Europe, the chief military command. But to command militarily, is to command despotically. Accordingly, in the Swedish diet, the nobles, sitting under the command of their marshal named by the king, are to speak or to hold their tongues, as a soldier is to turn to the right or to the left as the commander gives the word. Thus, as will be seen below, ordained Gustavus Adolphus a military king.

Hence, of all the words which ever were, or ever could be devised, to denote the president of an assembly, which is not meant for an army or a puppet-show, the word *marshal* is that which ought most studiously to be proscribed. France, therefore, in giving to the presidents of her national assemblies this simple and expressive name, instead of the swelling and so much coveted title of marshal, has had a fortunate escape.

The length of this note may demand justification, but needs no apology. While minds are led by sounds, and modes of thinking depend on association, names of office will never be of light importance. A king of Poland or Sweden looks upon himself as an injured being, so long as his will meets with any resistance that would not have been made to a king of Prussia or Denmark: and because a president is termed marshal, Sweden is destroyed.

* For instance, putting the question; declaring the decision from the number of the votes; giving orders to subordinates; giving thanks or reprimands to individuals; or, in short, using, in the name of the assembly, any other discourse of any kind which is not deemed of sufficient importance to be penned by the assembly itself.

† An assembly may in this point of view be deemed too numerous, when it is too numerous for the opinion of each member to be recorded distinctly in his own terms. This takes out of the rule such assemblies, for instance, as the boards of administration, and the principal courts of justice in Great Britain, and the boards established in the dominions of the English East-India Company.

1. It leaves him entirely at liberty to attend to his duties, and the cultivation of the particular talents which they require. If he be called to sustain the character and reputation of a member of the assembly, he will be often distracted from his principal occupation, and he will have a different kind of ambition from that which belongs to his office, without reckoning the danger of not succeeding, of offending, and of weakening his personal consideration by ill-sustained pretensions.

2. This exclusion is founded upon reasons of an elevated nature; it is designed to guarantee him from the seductions of partiality, and to raise him even above suspicion, by never exhibiting him as a *partisan* in the midst of the debates in which he is required to interfere as a *judge* — to leave him in possession of that consideration and confidence which alone can secure to his decisions the respect of all parties.

But it may be said, that the president, no more than any one else, can remain neuter with regard to questions which interest the whole nation — obliged especially as he is to be continually occupied with them, even as matter of duty; that it would therefore be better that he should be obliged to declare himself, and make known his real sentiments, and thus put the assembly upon its guard, rather than that he should enjoy, under a false appearance of impartiality, a confidence which he does not merit.

To this objection there is more than one answer: First, It cannot be denied, that so long as his internal sentiments have no undue influence upon his external conduct, they are of no consequence to the assembly, but that he cannot declare them without becoming less agreeable to one party — without exposing himself to a suspicion of partiality, which always more or less alters the degree of confidence.

Secondly, If you permit him to remain impartial, he will be so more easily than any one else. He will regard the debates under altogether a different point of view from that of the debaters themselves. His attention, principally directed to the maintenance of form and order, will be withdrawn from the principal subject. The ideas which occupy his mind during a debate, may differ from those which occupy the actors in it, as much as the thoughts of a botanist who looks at a field may differ from those of its owner.

Habit facilitates these sorts of abstraction. If it were not so, how could judges, full of humanity, fix their attention with a perfect impartiality upon a point of law, whilst a trembling family stood waiting beneath their eyes the issue of their judgment.

It follows from what has been said, that in a numerous political assembly, in which it is to be expected that passion and animosity may arise, that he who is called upon to moderate them, ought not to be obliged to enrol himself under the banners of a party, to make himself friends and enemies, to pass from the character of a combatant to that of an arbitrator, and to compromise by these opposite functions the respect due to his public character.

There have been assemblies which have only given a vote to the president when the votes have been found equal. This mode is more opposed to impartiality than that of allowing him to vote in all cases, and there is no reason which can be assigned in its favour. The most simple and natural plan to adopt in case of equality, is to consider that the proposition which has not had the majority of votes is rejected. In matters of election, it would be better to resort to lot, than to give the preponderant voice to the president. The lot offends nobody.

§ 3. *Sequel. Choice.*

Rule 10. In a legislative assembly, or any other free and numerous political assembly, a president ought in every case to be chosen freely and exclusively by the assembly over which he is to preside.

Rule 11. In the choice of a president, the votes ought to be taken in the secret way, and the majority ought to be an absolute one.*

Rule 12. A president ought ever to remain removable by the assembly at its free pleasure, but not by any other authority.

Rule 13. In a permanent assembly, on the occasion of choosing a permanent president, if there be no other president in office, it may be better to accept a president *pro re natâ* from without doors, upon the ground of any claim, however slight, if single, than to stand in that instance upon its liberty of choice.†

Rule 14. So for all kinds of business in an assembly, which, however free, is but occasional.‡

§ 4. *General Observations.*

A very simple observation will furnish a clue to all the reasons that can be produced or required in support of the propositions

* In contradistinction to a comparative one: *i. e.* if there be a number of candidates, the having more votes than any other candidate ought not to determine the election, unless he who possesses such comparative majority have a majority of the whole number of the votes.

† For instance, where a king or other chief magistrate in any state institutes a new assembly, or convokes one not already provided with one by ancient designation, it might be of use that he should name a president for this purpose only.

‡ Thus, in an English county meeting, it may be better to accept of the presidency of the sheriff, though an officer of the king's appointment, than to consume the time in debating who shall fill the chair.

above laid down. Throughout the whole business, the grand problem is to obtain, in its most genuine purity, the real and enlightened will of the assembly. The solution of this problem is the end that ought everywhere to be had in view. To this end, everything that concerns the president ought of course to be subservient. It is for the sake of the assembly, and for their use alone, that the institution of this office is either necessary or proper. The duty and art of the president of a political assembly, is the duty and art of the *accoucheur: ars obstetrix animorum*, to use an expression of the first Encyclopedist and his not unworthy successors;—to assist *nature*, and not to force her—to soothe, upon occasion, the pangs of parturition—to produce, in the shortest time, the genuine offspring; but never to stifle it, much less to substitute a changeling in its room. It is only in as far as it may be conformable to the will of the assembly, that the will of this officer can, as such, have any claim to regard. If, in any instance, a person dignified with any such title as that of president of such or such an assembly, possess any independent influence, such influence, proper or improper, belongs to him, not in his quality of president, but in some foreign character. Any influence whatever that he possesses over the acts of the assembly, otherwise than subject to the immediate controul of the assembly, is just so much power taken from the assembly and thrown into the lap of this single individual.

It follows, that nothing ought to be permitted by the assembly to be done by a president, that the assembly itself could do in the same space of time.

In the case of an assembly and its president, we see judicial power in the simplest form in which it can exist, and in the simplest set of circumstances in which it can be placed. The judge single: the parties acting all the while under his eye. Complaint, judgment, execution, treading with instantaneous rapidity on the heels of contravention. Happy the suitor, if, in the other cases of procedure, instead of complication and delay, this simplicity of situation and celerity of dispatch had been taken for the standard of comparison and model of imitation, by the founders and expositors of law.

The regulations which have been proposed above appear so simple and so suitable, that it is natural to suppose that they would have presented themselves to all political assemblies.

But if we proceed to consider what has been practised among different nations, we shall find that almost all these rules have been forgotten. The English system, which most nearly approaches to them, differs in an essential point. It allows the president to deliberate and vote. All establishments have commenced in the times of ignorance: the first institutions could only be attempts more or less defective; but when experience renders their inconveniences sensible, the spirit of routine opposes itself to reform, and also prevents our perceiving the true sources of the evil.

CHAPTER VI.*

OF THE MODE OF PROCEEDING IN A POLITICAL ASSEMBLY IN THE FORMATION OF ITS DECISIONS.

§ 1. *Introductory Observations.*

THE subject we are now about to engage in, is in its own nature abstract, intricate, and obscure. Of these undesirable qualities in the

* This chapter was originally published in 4to, in the year 1791. In the preface to that publication it is stated, that "the circumstance which gave rise to the publication of this detached chapter, was the notification that had been given of the then approaching meeting of the French States-General, since termed the National Assembly.

"As to the particular matter of the present Essay, preceded, as it required to be, by several other matters, as well in respect to the chronological order of the subjects treated of, as in respect to the order that seemed most favourable to investigation, it presented itself as second to none in the order of importance.

"What was more, the very rules that suggested themselves as necessary to every assembly, turned out to be the very rules actually observed in both assemblies of the British legislature. What theory would have pitched upon as a model of perfection, practice presented as having been successfully pursued: never was the accord more perfect between reason and experience.

"The conjuncture which gave rise to the publication seemed to be such as would give it its best chance of being of use. A political assembly, selected from the whole body of a great nation, were about to meet for the first time. Everything that concerned them was as yet new to them: everything was as yet to create. They were in the situation of a manufacturer, who besides the work that was the object of his manufacture, should find himself under the necessity of making the very tools he was to work with. The presenting these new manufacturers with a new set of tools, with a description of their uses—tools whose temper had been so well tried—was the object of the present design.

"The subject, however, taken in its full extent, and handled in the manner in which it was endeavoured to be handled, was far too extensive for the time. All that could be done at the moment, was to select for immediate publication what seemed to stand first in the order of importance. By forced exertions, the part now published was accordingly printed off; and, of a few copies that were sent to Paris, the last sheet reached that metropolis a day or two after the first formal meeting of the assembly, and before any business was begun upon. Of these copies one having found its way into the hands of the Comte de Mirabeau, the sheets, as fast as they came over, had been honoured, as I afterwards learned, with

subject, but too strong a tincture must inevitably be imbibed by the work. To judge by the celerity with which a *motion* is oftentimes made, and an order framed in conse-

a translation, either by the pen of that distinguished member, or under his care.

"Congenial affections had happened about the same time to give birth, without my knowledge, to a little tract that promised to afford not only furtherance to the design, but assistance towards the execution of this larger enterprise. To deliver the theory of a copious and unattempted branch of political science, was necessarily a work not only of time, but of bulk, and would require more paper than could, at the ordinary rate of business, make its way, in the course of several months, through the press. Practice itself, stated simply and without reasoning, might be comprised within limits much less extensive. Moved by these considerations, a gentleman eminently qualified for the task, had undertaken, much about the same time, this philanthropic office. His valuable paper was sent over in manuscript: a translation of it was not only made, but soon after published, by the procurement of the celebrated Frenchman above spoken of, whose name stands in the title-page.[a]

"To judge from the temper and modes of thinking that had so long appeared prevalent in the French nation, the larger of these works, if tolerably performed, and the other, almost at any rate, seemed to possess a fair chance of engaging some attention, and of being turned to some account in practice. The prepossession so generally entertained in favour of English law, had been nowhere more strenuous, more general, or more liberally avowed, than among our nearest neighbours. If such was the case with regard to points in relation to which both countries had possessed the advantage of practice, it seemed still more natural that it should be so with regard to points like these, in relation to which the whole stock of experience had fallen exclusively to the share of that country, to whose example the other had been used to look with so favourable an eye. To judge beforehand, the danger seemed to be, that English practice at least, whatever might become of English doctrine, so far from being slighted, should meet with an adoption rather too general and indiscriminate. What seemed to be apprehended was, rather that the dross should be taken up and employed, than that the sterling should be rejected. To make the distinction as plain as possible, was therefore all along one of the principal objects of my care.

"With these expectations the event has, it must be confessed, but indifferently accorded. Howsoever it has happened, both these labours, for any good effect they seem to have had in the country to whose service they were dedicated, might as well have been spared. Of the theoretical Essay, the translation has not been so much as published: and the practical might as well not have been published, for any use that seems to have been made of it. Of the theoretical tract, the author was indeed given to understand at the time, that it had made as many proselytes as it had found readers. But this it might easily do, without having much success to boast of: for at that busy period, the time of the leading people in that country was, as it still continues to be, so fully occupied by the conversation which the topics of the day furnished in such abundance, that the faculty of reading, as to everything but what absolute necessity forced into men's hands, seems to have been almost laid aside.

"Be that as it may, from any effect that has manifested itself, either in the rules or the practice of the French Assembly, few or no indications have appeared, from which it can be inferred that either British practice, or British reason, or both together, have met with that attention that either alone had some title to expect. A few English expressions, and some of them too misapplied, compose nearly the whole of what France has drawn upon us for, out of so large a fund.

Has she reason to congratulate herself on this neglect? On the contrary, scarce a day that she has not smarted for it: nor has the wisdom of these rules received a farther, or more illustrious demonstration, from the beneficial consequences that have attended the observance of them in the one country, than from the bad effects that have resulted from the non-observance of them in the other. How often has the assembly been at the eve of perishing, by the mere effect of the principles of dissolution, involved in its own undigested practice! What a profusion of useless altercation, what a waste of precious time has been produced, by doubts started, and disputes carried on, concerning the terms of a decree, days after the decree has been supposed to have been framed! A sort of dispute which never has arisen for ages, nor ever can possibly arise under the British practice — the only practice on this head reconcileable to common sense. The minutes of the proceedings — a work performed with the utmost exactness and punctuality in the House of Commons by a single clerk — exercises the patience, and finds full employment for the time and ingenuity of six members of the National Assembly of France. In London, the publication of this work is as regular as that of a daily newspaper: while, in the corresponding work at Paris, the series of numbers has been commonly at least ten days or a fortnight in arrear, besides being broken by frequent gaps, and disturbed by second editions correcting and cancelling the first.

"Little by little, the practice relative to these points has, it is true, already undergone some improvements. Well might it: for, if it had not, instead of going on ill as it does, it could not have gone on at all: and so far as, with relation to these same points, it has been altered and improved, so far has it been brought nearer and nearer to the British practice, as delineated and justified by the ensuing pages.

"As to the present detached Essay, a natural question is, how it happens, that being but a part, and that not the first, it comes now to be published separate from, and before the rest? — The answer is, that though but a part, it is, as far as it goes, complete within itself; and, as to every purpose of intelligibility, completely independent of everything that was designed to precede or follow it. Observing it thus circumstanced, it has occurred to me that the sheets might as well be transferred to the booksellers, as remain any longer an incumbrance to the printer. Should it, in this country, be found to afford half an hour's amusement to half an hundred thinking individuals, the publication will have done its office."

[a] See the collected edition of Dumont's Bentham, (Brussels, 1289,) I. 453, *et seq.*

quence, the path may at first glance appear short and simple. But, in this as in other instances, practice may be short and simple, where description and discussion are tedious and involved. To put in action the whole muscular system, is the work but of an instant; but to describe the parts concerned in that action, and the different modifications it admits of, is to exhaust the stores of a copious and recondite science.

For affording a clue to this labyrinth at the first entrance, no expedient seemed to promise better, than that of singling out, and laying before the reader at one view, the essential points upon which the due conduct of the business seemed principally to turn; suggesting at the same time such regulations as the dictates of utility seemed to prescribe in relation to those points. Chronological order, the order of the incidents, has for this purpose been broken in upon, lest these points of primary importance should have been lost, as it were, in the multitude of less essential details. But though broken in upon, it is not anywhere reversed: and, in the subsequent discussions, strict order will reassume its empire.*

On these few points turn the essential differences between the British and (what, as far as I have been able to learn, has been) the French practice in this line. In these points, too, if the reasoning which the reader will find as he advances be not erroneous, resides the singular excellence, or rather exclusive fitness, of the former mode.

In matters of inferior importance, invention has been set to work; in these, though equally disposed to have hazarded invention, I have found nothing to do but to copy.†

In this bye-corner, an observing eye may trace the original seed-plot of English liberty: it is in this hitherto neglected spot that the seeds of that invaluable production have germinated and grown up to their present maturity, scarce noticed by the husbandman, and unsuspected by the destroyer.

The importance of these uninviting forms is no fine-spun speculation — no fanciful conceit. Political liberty depends everywhere upon the free action and frequent and genuine manifestation of the public will: but the free action and genuine manifestation of that will, depend upon the mode of proceeding observed in going through the several steps that must be taken before any such result can be produced.

Without any such regulations as those here insisted on—in short, without any regulations at all — a general will, or pretended general will, may come now and then to be declared. But of what sort? Such an one as the will of him who gives his purse to save his life, or signs a deed he never read, or takes an oath with an *et cætera* at the end of it, is to the free and enlightened will of the individual. Without rules, the power of the assembly either evaporates in ineffectual struggles, or becomes a prey to the obstinate and overbearing: *Detur fortiori*, or rather *robustiori*, would be its proper motto. Unanimity may glitter on the surface: but it is such unanimity as famine and imprisonment extort from an English jury. In a system of well-digested rules, such as the English practice, with little improvement, would supply, will be found the only buckler of defence that reflection can have against precipitancy, moderation against violence, modesty against arrogance, veracity against falsehood, simplicity against deception and intrigue.

Without discipline, public spirit stands as poor a chance in a numerous assembly, as valour in the field.

Happily the peaceful branch, though hitherto less understood than the military, is neither quite so difficult to learn nor quite so burthensome to practise. The essential articles of it will be found comprised within the compass of a page.

It is the want of such a general will, the natural effect of the total want of discipline, that has been the great cause of the inefficiency and inutility so justly imputed to all former assemblies of the States-General of France; or, to speak correctly, it is in the non-formation of such will — in the perpetual failure of whatever efforts have been excited by the desire of forming one, that this inefficiency has consisted. But a political body lives only by the manifestation of its will. Here, then, intelligence is power; and to administer intelligence, is to give life.

The spirit of the people, the generosity of its superior classes, the unexampled virtue of the Sovereign, and the wisdom of the minister, all concur in promising to France a constitution which may soon be an object of

---

* Order, useful as it is in general to facilitate conception, and necessary as is the assistance it affords to the weakness of the human faculties, is good for nothing else: so that in the few cases where instruction can be administered to more advantage by dispensing with the laws of order than by the observance of them, to adhere to those laws with an inflexible pertinacity would be to sacrifice the end to the means.

† I speak of the regulations themselves: for, as to the principles by which the propriety of regulations is to be tried, and the particular reasons on both sides deducible from those principles, these are matters which lie still open to the researches of invention in every province of the demesnes of law.

Considerations of expediency may have influenced practice long before they have found their way into books, or even into discourse. But, where this is the case, to report is to invent; for reason, till clothed in words, is scarce deserving of the name: it is but the embryo of reason, scarce distinguishable from instinct.

envy, if it is not of imitation, to Great Britain. But inestimable as such a blessing would be, the benefit derivable from it will be found to hang upon so slender, and to many an eye imperceptible a thread, as the system of tactics, or the no-system, which in the form of their proceedings the regenerated assembly may happen to embrace. The pains employed in the construction of this great instrument of public felicity will prove but lost labour, if the only true method of working with it remains unpractised.

Powerful talents, and public-spirited dispositions, comprise the utmost good which the best possible constitution can produce. But of what avail are talents and dispositions, so long as either no decision is formed, or none that answers to its name?

Considerations of such essential importance as I shall have occasion to bring to view, can scarcely indeed at this interesting crisis, and at this era of inquiry, have escaped altogether the researches of an acute and ingenious nation; and the labours of many a pen better suited to the task have probably been employed ere now upon this great object. But as the success with which the public is served, depends upon the use which each man makes of his own powers, and not upon the reliance he places on those of other men — as this, like any other subject, may profit by being exhibited by different writers in different points of view — and as the mention of these more striking articles would be necessary, were it only to save the chain of reasoning that connects the whole, from appearing broken and obscure, the importance of them did not seem a sufficient warrant for the omission either of the provisions themselves, or of any part of the reasoning by which that importance is holden up to view.

In my endeavours to communicate such lights as my researches may be able to throw upon the subject, the following is, in general, the method I pursue: — In the first place are exhibited such *regulations*, relative to each head, as the dictates of utility appear to recommend; in the next place are subjoined, in the way of question and answer, the *reasons* by which such provisions came recommended to my notice.* After that, follows a view of the *British practice*, relative to the points in question; after that again, a view of what I have been able to collect relative to the *French practice*, the justification and confirmation of which, where it appears right — the correction of it, where it appears wrong — and the completion of it, where it appears deficient, is the principal object of the present work. Lastly, where occasion seemed to require, a few general *observations* are subjoined, containing such remarks as could not conveniently be brought under any of the former heads; particularly for the sake of placing different branches of the subject in a comprehensive and comparative point of view.

For the purpose of giving an idea of the French practice relative to these points, the fairest specimen, and that which would have rendered every other of small importance, would have been that of the States-General of France. But of this practice, it seems to be agreed that no documents are to be found. One may even see *à priori*, that nothing of the kind could well have had existence. Between the want of efficiency and the want of form, the connexion is in this instance so natural, that, in default of positive proofs, either of those circumstances might serve as a presumptive evidence of the other. If their proceedings had been attended with any effect, we should have seen the mode in which they proceeded: if their mode of proceeding had been in any tolerable degree suited to the purpose of giving birth to a general will, a general will would at times have been formed; and, being formed, would have been productive of some effect. *Nihil fecit* is the phrase in which some of the monkish historians have comprised the history of several of their kings.† The same history, with a small addition, may serve for all their national assemblies: *nihil fecerunt* gives the catalogue of their acts; *nullo modo*, the form of their procedure.

Failing this source of intelligence, the next one should naturally turn to, is the practice of the few provincial states of ancient institution still subsisting in that great empire.‡ From the journals of these assemblies, if made public, intelligence more or less satisfactory relative to this head could not but be afforded; but unfortunately I have not been able to hear of any such publication, and from circumstances I am strongly led to think no such publication has ever been made.

The only remaining source is that afforded by the modern provincial assemblies, instituted at first in two provinces only,‖ by way of experiment, in the years 1778 and 1779, and at length in the year 1787 communicated to the whole kingdom. The regimen established in these assemblies, if it does not give the most ancient mode of proceeding known in France, gives, what for the purposes of instruction is much more valuable, the latest.

* These reasons bear each of them a relation to some particular principle of the number of those laid down in Chapter I. This will account for their being conceived in a form not always the most natural, and which consequently, were it not for the advantages dependent upon this sort of symmetry, would not have been the most eligible.

† Meaning by *nothing*, the foundation of no monasteries.

‡ *Viz.* Brittany, Lanquedoc, and Burgundy.

‖ Berry and Haute Guyenne.

It is more so, in as much as through this medium may be obtained some sort of oblique view of the mode of proceeding observed in the old established provincial states. For, in drawing up a code of regulations for the first instituted of the provincial assemblies, those established for the provincial states compose the model which the committee employed on that business expressly declare themselves to have taken for the basis of their work.* In this code, adding to it the materials furnished by the succeeding establishments of the same kind, we may therefore view the quintessence of that part of the national stock of wisdom which has applied itself to this important subject.

Partly for shortness, partly for precision's sake, I have chosen all along, as far as the nature of the case would give leave, to exhibit the proposed regulations in the very words in which they might be couched. This practice, which in all authoritative compositions of this nature will be seen to be absolutely necessary, is, in unauthoritative ones, highly useful at least, and convenient. By specification, description is saved, attention arrested, and expectation satisfied: description, however well performed, leaves the main work still undone.

§ 2. *Principal points to be attended to in the mode of proceeding relative to the formation of the acts† of a political assembly.*

1. IDENTITY of the terms of the *proposition*‡ with those of the *act* proposed.

2. FIXATION of the terms of the proposition by *writing*.

3. UNITY of the subject of debate kept inviolate.

4. DISTINCTNESS of the process of *debating* from that of *voting*.

5. In *debating*, NO FIXED ORDER of pre-audience.

6. The *votes* given not one after another, but ALL AT ONCE.‖

Regulations proposed relative to the above points.

ARTICLE I. Nothing shall be deemed to be the act of the assembly, that has not been proposed in and to the assembly by a motion made for that purpose,* put to the vote, and adopted by the majority of the votes.†

ART. II. Every proposition, designed to give birth to an act of the assembly, shall be exhibited in *writing* by the mover, and conceived in the very terms, neither more nor fewer, by which it is designed such act should stand expressed.‡

ART. III. A proposition of any kind having been once received, — until that proposition has been disposed of, no other motion shall be made, unless for one or other of three purposes: —

1. To offer an *amendment* to the proposition already on the carpet;

2. To propose a mode of putting an end to the business without decision; or

3. To reclaim the execution of some law of order at the instant of its infringement.

ART. IV. The process of *debating* and that of *voting* are distinct processes; nor shall the latter be entered upon till after the former is gone through.

ART. V. In debating, no member, after the author of the motion, shall have the right of speaking before any other,‖ but [he who first offers himself shall be first heard,§ or else] the competition for pre-audience shall be decided by lot.¶

* Procès-Verbal de l'Assemblée Provinciale de Berri, 23 Novembre 1778. The declaration here spoken of does not, it is true, in express terms comprise any other regulations than those relative to the "*convocation* and the *formation*" of the assemblies in question; but, as the committee who on that day presented a code of regulations relative to those two heads, are the same also who, three days afterwards, present another code relative to the *mode* of *proceeding* to be observed, it cannot be supposed that the documents, which had been taken for a model on the first of those occasions, were neglected on the second.

† *i. e.* as well momentary and particular *orders* and *resolutions* as permanent and general *laws;* so likewise *addresses*, declarations of *opinion* (termed also *resolutions* in the British practice,) and *reports*.

‡ *i. e.* whether *motion* or *bill*, or draught of any other sort of act of assembly, not comprised under the name of *motion*.

‖ This last point is not altogether of equal importance with the preceding ones: but as it is so naturally connected with the 4th and 5th, and concurs with them in marking the opposition between the French and British practice, it was not thought worth while to separate it from them.

* This is according to the British practice. In two subsequent chapters relative to the previous promulgation of motions and bills, I shall have occasion to propose an additional mode of introducing propositions; which mode, if adopted, would require an alteration to be made in the penning of this article: but, however different from this in other respects, it is, with respect to the points here noted, grounded on the same principles.

† *i. e.* by at least a *comparative* majority of the number of voters *present*. Shall the majority of the voters *present* be sufficient, if it falls short of amounting to a majority of the whole number of persons entitled to vote?

‡ Form for a motion; *i. e.* for the introducing of a proposition: — "I, the undersigned, propose the Draught following, to be made an Act of the Assembly." (Signed) "A. M."

N. B. — Then give the order, resolution, address, report, bill, or whatever other act it be, *in terminis*, whether it consist of six words or six hundred pages, beginning with its title, when it has one.

‖ In a subsequent chapter, I endeavour to show that the author of a motion ought to be heard in support of it, immediately *after*, but not, as is the British practice, *before* he makes it.

§ ¶ The passage in brackets expresses the British practice; the remainder, an operation

ART. VI. Votes, when given openly, shall be given, not one after another, but as near as may be, all together.

§ 3. — POINTS I. & II. *Motion written, and in terminis.*

Questions, with Answers exhibiting reasons.

Question I. Why nothing to be given as the act of the assembly that has not been put to the vote, and carried in the assembly?

Answer: This is only saying in other words that no act of the assembly shall be forged.

British practice. — From several orders of the House of Lords, made towards the beginning of the last century, it should seem, that about that period attempts to commit such forgeries had been made.* A counterfaction of this kind could not well have had for its author any other person than either the ministerial officer (the clerk) who has the penning of the journals, or the presiding officer (the Speaker), under whose authority and command the other acts.

The practice of the House of Commons furnishes two examples, and, as far as appears, but two, of an incongruity, the notice of which may serve by way of illustration to this rule.

One is that of a memorandum on the journals, that "the Speaker, by leave of the House, declared it to be their sense," so and so.† Was a motion in those words made, put to the vote, and carried? If not, no leave of the House was given, no sense of the House was taken: in the other supposition, the history given in this memorandum, which is a long and rather a perplexed one, was of no use. The usual introduction, the word *ordered*, or the word *resolved*, would have been a much more intelligible one, and just as proper in this case as in any other.

2. As to the other instance. At the commencement of every session, immediately upon the return of the Commons from the House of Lords, where they have been all hearing the king's speech in a place not big enough to hold a quarter of their number, before any other business is done, a bill, in pursuance of ancient orders, is read by the clerk, by direction of the Speaker, for form's sake.‡

"This custom," says Mr. Hatsell,‖ "I understand to be nothing more than a claim of right of the Commons, that they are at liberty to proceed in the first place, upon any thing they think material, without being limited to give a preference to the subjects contained in the king's speech." That such was the reason, may be, and upon the strength of such respectable authority, I suppose is, very true. But such a form is as absurd in itself as incompetent to the end. This thing called a *bill*, what title can it be said to have to that name? The clerk reads it, because the Speaker orders him: whence comes it? From the Lords? Not so: for as yet they have done nothing, any more than the Commons. From the Speaker? But he has no right to make so much as a motion for leave to bring in a bill, much less to bring in a bill without leave. A bill is a composition presented by some member: the thing here called a bill, is a child without a father, born, like Melchisedec, in the way of equivocal generation. The case seems to be, that at the time this order was established, no clear idea of the mode of generation of an act of the House seems to have been as yet formed. It was not as yet understood, that a composition, to be an act of the House — that is, of all, or a majority of the members — must, if it took its rise in the House, have begun by being the act of some one member. But to appear to be the act of some member, it must have been exhibited by him as such; and to make such exhibition, is to make a motion.

Years after this period, or these periods (take any of them) in the House of Lords, as we have just been seeing, things would be starting up, pretending to be acts of the House — orders, resolutions, rules — nobody knew how. There seems to be but too much ground for apprehending that this may still be liable to be the case in the French practice. But of this a little further on.

Make what one will of it, being no act of the House, it is no exertion of any right of the House: it answers not that purpose, any more than any other.

The right in question, so far from receiving any support from this futile form, neither requires nor admits of any support whatever. It exists of necessity in the first instance: it follows from the very constitution of that and every other political assembly. Nothing can be done — nothing can be expressed by the House, without being done, without being expressed, at some time or other, by some member of the House: expressed either *viva voce* or by writing, or in some other mode, no matter what — say, for instance, *viva voce*, by speaking. But when a man is up to speak, who shall say what it is he will speak, ab-

which I have ventured to recommend as a preferable one in a succeeding chapter, in which I propose an instantaneous mode of performing it: but the main point, as will be seen, is the putting a negative upon all fixed order; and in that respect both methods agree.

* Lords' Orders, Art. 45. Lords' Journals, 14th December 1621; 23d February 1623; 20th May 1626.

† Commons' Journals, 27th January 1697.

‡ Commons' Journals, 22d March 1603; 7th April 1614; 3d February 1620; 21st February 1623.

‖ Precedents of Proceedings in the House of Commons, with Observations, by John Hatsell, Esq., First Clerk of the House, 1785. Vol. I. p. 59.

straction made of any antecedent rule? He speaks not to the business offered to the House by the king, but to that or any other business, as he thinks fit. For the House therefore to be in possession of this right, there can need nothing but the non-existence of a rule to the contrary.

The futility of this form appeared on the same recent occasion on which the establishment of it was recognised. On the 15th of November 1763, before this pretended bill was read, Mr. Wilkes and Mr. George Grenville start up together — Mr. Wilkes, to tell his own story about a breach of privilege, and Mr. Grenville (then minister) with a message on the same subject from the king. Great debates which should be heard first — Mr. Wilkes's speech, Mr. Grenville's speech, or the bill: it was carried at last in favour of the bill.* What was got by this? The House had the pleasure of hearing this bill; and then there was the same matter to settle — who should be heard first, — Mr. Wilkes, or Mr. Grenville, as before.

Question II. Why in writing?

Answer: 1. Because it is only by writing that the tenor of any discourse can be fixed for any length of time.

2. It is only by such fixation that it can be ascertained that the draught exhibited is capable of standing as a resolution of the assembly, in the very words in which it is proposed.

Question III. Why put into writing by him who makes it, and not by any one else?

Answer: 1. Because no third person can so well tell what it is a man means as he himself can. If the words of it, as committed to writing, are chosen by anybody else, the utmost accuracy it can aspire to in the hands of such third person is, the being as exactly representative of the meaning of the avowed author of the motion, as if he himself had chosen them. But the chances are rather against its possessing that extreme degree of accuracy; and were they ever so much in favour of it, yet so long as there is the smallest chance on the other side, such chance will form a conclusive reason against the committing the business of penning the motion to anybody else.

2. To save time. Between the penner and the author, where they are different persons, a conversation of some sort must be carried on. This conversation may, and frequently must, occasion discussions and disputes. The sense of the author may be perverted by accident or design: or, where no such perversion takes place or was intended, it may be suspected. All this while, business must be at a stand, and the assembly sitting to no purpose.

* II. Hatsell, 59.

Let it be of the mover's penning; and while he is about it, no part of the assembly's time is taken up. He may have penned it out of the house, and ought so to do (as will be seen farther on) whenever it can be done.

3. To promote maturity of composition. — If the author of a motion is permitted to rely on a third person for the penning of it, such permission will be liable to produce hasty indigested motions, the impropriety of which the author himself, had he been obliged to put them to writing, might have discovered. Writing summons up the attention to apply itself to the discourse written, and furnishes it with a fixed subject. Whoever, in any instance, has corrected what he had once written, may find, in that single instance, a reason fully sufficient to justify the establishment of this rule.

Question IV. Why in the very words in which, when made an act of the assembly, it is proposed to stand?

Answer: 1. Because no other terms can express, with the certainty of being accurate, the object which the author of the motion proposes to the House. The composition given as the act of the assembly, is not really its act, any otherwise than as far as it is the very composition which those, whose votes form the decision of the assembly, have given their votes in favour of. If the discourse they had voted for differs, in a single word for example, from the discourse exhibited by the author of the motion, then, as to such word, it is not of his penning; which, as has just been proved, it ought to be. The only discourse they can have meant to adopt, the only discourse they can all of them, and from the beginning, have had under view, is, to a word, the very discourse presented to them by the mover: if the resolution given in their name by any one else — the secretary, for instance, or the president — differs from that original in a single word, it is, *pro tanto*, a forgery.

I say, in a *single word:* for every one knows, that in a single word may be comprised the most important alterations: take, for instance, the word *not.*†

British practice. — In every art, the proper mode, how simple soever, and how incontestably soever, when once hit upon and clearly stated, it appears to be a proper one, and even the only proper one, is seldom the one pitched upon at first.

† I lay out of consideration at present the case of an *amendment:* of which hereafter. If an amendment is proposed, it is by some other member, who has the same right to propose the alteration, as the author of the original motion had to propose such motion. The amendment being carried, the amended motion comes instead of the original motion; and the resolution passed by the assembly has two authors — two equally known and avowed authors, instead of one.

In the British House of Commons it was the ancient practice, we are informed by Mr. Hatsell,* "for the Speaker to collect the sense of the House from the debate, and from thence to form a question, on which to take the opinion of the House; but this," adds he, "has been long discontinued; and at present the usual, and *almost* universal method is, for the member who moves a question to put it into writing, and deliver it to the Speaker; who, when it has been seconded, proposes it to the House, and then the House are said to be in possession of the question."

From Lord Clarendon's account of his exploits in the character of chairman of a committee,† there appears some reason to suspect, that at that time the practice spoken of in the above passage still subsisted: otherwise it is not easy to conceive how that able statesman could have done so much mischief as he boasts of.

The way he took was, amongst other things, to report, which he says he frequently did, two or three votes directly contrary to each other. He must therefore have contributed, more or less, to the making of them so, or the "*entanglement*" he speaks of would not in any degree have been, what he boasts of its being, his work. Whatever had been their contrariety, had they been moved *in terminis*, and in writing, by their respective authors, it would not have been in his power to have had any share in it.

That such, at any rate, was the practice in the year 1620, two or three and twenty years before the period Lord Clarendon speaks of, appears from the Commons' journal of that year: in which, on an occasion where the Speaker's conduct had been the subject of animadversion, in the course of the debates, amongst other charges is that of a practice he was in, of "*intricating the question*," and another, of his having "*made many plausible motions abortive*."‡

French Practice. — Provincial Assemblies. — What the practice has been in the French

* II. Hatsell, 81.

† History of the Rebellion, b. iii. vol. i. p. 275, 8vo edition, 1705.

‡ Commons Journals, 9th March 1620

Since this sheet was sent to the press, chance has led me to a passage in the journals of the House of Commons, by which it appears, that even so late as the year 1675 the identity of the terms of the act of the House with those of the motion was not invariably preserved. I will state it at length, the rather as, while it exemplifies the deviation from that rule, it may also serve to exemplify and demonstrate the ill consequences of such deviation.

The whole passage is as follows:—"A debate arising in the House touching the ancient order and course of the House in the method of raising supplies, and concerning the precedency of the lesser sum;

"The House, upon the question, did resolve and declare it an ancient order of the House, That when there comes a question between the greater and lesser sum, or the longer or shorter time, the least sum and longest time ought first to be put to the question."

Upon the face of this passage two propositions may be laid down as undeniable:—

1*st*, That the words of it are not all of them the same, without any variation, as those employed by the author of the motion which gave birth to it.

2*dly*, That if in any part of it such identity was preserved, it is impossible to say how far such part extends, it being impossible to say where it begins.

The part that looks most like the authentic, and, if one may so say, the enactive part of it, is that which begins at these words: "*that when there comes a question between the greater and lesser sum* . . . ."

But this cannot be taken for the beginning of the authentic part, for two reasons:—

1. Because these words, in order to make up, along with the succeeding one, a sentence capable of officiating in the character of an act of the House, require to be preceded by the word *resolved*, or (to use the phraseology that comes nearest to that word in the passage in question) by the words *resolved and declared*. But in this passage no such word or words stand immediately precedent to the words in question: nor can any form of words capable of answering that purpose be found in it, without going farther back, and that so far as to involve some words which upon the face of them could not have been the words of the author of the motion, could not have been the words of the House.

To get the complement of words necessary to make out an intelligible proposition, the least remote ones one can begin with are the words, "The House upon the question did resolve and declare." But these, it is evident, could not have been the words of the House, nor words given by the author of the motion as designed to be adopted by the House. They are not words of an act of the House, but words used by a third person in speaking of an act of the House.

2. Another reason why the part beginning at the words, "*that when there comes a question*," cannot be taken as comprising all the words employed by the author of the motion, is, that between these words and the first words of the paragraph come others, the import of which forms an essential part of the import, whatever it be, of the act of the House; viz. those which speak of the antiquity of the regulation, the establishment of which was in view:—"*The House, upon the question, did resolve and declare it to be an ancient order of the House*." These words, "*an ancient order*," we see, are in their import inseparably interwoven with the preceding ones, which we have seen must have been words, not of the House, not of the author of the motion, but of a third person, the penner of the journals.

So far as to the fact of the uncertainty: now as to the ill effects of it. They consist in this, that as you cannot tell what part of the passage, if any, was in the words of the act of the House, you cannot tell to what cases the act of the House meant to extend itself. This we shall see immediately.

The first paragraph, not amounting of itself to

assemblies of old standing, such as the Provincial States and the Chambers of Parliament, does not appear, in a direct way, from any documents I have been able to meet with. The affectation of secresy, which, till the present auspicious period, has pervaded the whole system of French, as in general of monarchical government, keeps everything of this sort under a cloud.

But of the general practice and notions on this head, the regimen prescribed to, or imagined by, the lately instituted provincial assemblies, affords pretty good presumptive evidence: and that evidence shows the practice in this respect to have been pretty much on a par with the English, at the time spoken of by Lord Clarendon; that is, about a century and a half ago.

"The reports of the committees," says an author who has given us a general account of the constitution, discipline, and proceedings of these assemblies,* "the reports of the committees are made with a good deal of care. After having well settled the question, an account is given of the different opinions [*avis*;] of the effect produced by such and

an intelligible proposition—not amounting to a complete grammatical sentence, is inextricably interwoven with the second. They form two parts of the same sentence; and in both parts there is matter equally capable of being considered as representative of a part of the import of the act of the House. As you cannot tell where the language of the historiographer of the House ends, and where the language of the House itself begins,—it may be, that both paragraphs were expressive of the sense of the House; it may be, that only the latter was.

Now then comes the uncertainty and the mischief. The last paragraph gives the proposition generally, and without restriction: the former paragraph applies a restrictive clause. The last gives to understand, that in all cases where divers sums, meaning sums of money, are in question, it is the least sum that is to be put to the question first: the former paragraph contradicts this proposition in its character of an universal one, and says, that the only case to which this rule is to be deemed to extend, is that where the business upon the carpet is the business of supply—where the question is relative to "*the method of raising supplies.*" What is the consequence? That it is only in the case where the question is touching *the method of raising supplies*, that this passage in the journals affords any certain rule: and that, as to all other questions in which sums of money may be concerned, it not only affords no certainty, but presents a rule with which the certainty of any conclusion that can be formed relative to the subject is absolutely incompatible. The absence of all rule leaves the subject open to such other means of decision as the nature of it comports; but an ambiguous rule is mortal to all certainty while it lasts, and renders all true and regular decisions relative to that subject impossible.

Observe how subservient a rule, thus circumstanced, is to the purposes of disingenuous altercation.

A debate arises on a question not relating to supply. Does it suit your purpose to have the rule attach upon this question?—present the last paragraph alone. Does it suit your purpose to take the question out of the rule?—produce both paragraphs together.

Collateral considerations only make the confusion thicker: such lights as are to be collected from the situation of the legislators point one way; the interpretation given by subsequent practice points the other.

It is tolerably evident, that in the minds of the authors this rule had no other extent than what related to the single business of supply. Where money was concerned, the great object with them was how to keep their purses as close shut as possible against the swindler on the throne: it was no part of their purpose to sit down and frame a set of general principles, fit to enter into the composition of a regular code. How should it have been, when down to the present hour none of their successors have dared even to harbour any such ambitious thoughts?

Besides that, the rule is given as an ancient one; and the farther back we go in the history of the House of Commons (setting aside the period of its short-lived tyranny during the civil wars) the less we find them have to do with money for any other purpose than the simple one of affording a temporary relief to the necessities of the Crown.

On the other hand, subsequent practice is in favour of the more general construction: in a question noways relating to the business of affording supplies to the crown, we shall find, in a succeeding chapter, a curious instance: and such, for aught I know, may be the practice in every other instance. Here, then, to increase the confusion, we have precedent against reason; and all for want of the observance of a rule of composition so simple in its conception, and so easy in practice.

To exhibit what ought to have been done, as well as what ought not to have been done, I will now give the order in question as it ought to have stood, and as it would have stood had it been penned on the same plan with others that precede and follow it in the same volume, and even in the same leaf. The words in brackets express the dubious parts, the retention or omission of which will give the different constructions of which the passage, as it stands in the journals, is susceptible:—

The passage as it stands.	*The resolution as it ought to have been given in by the author of the motion, and entered by the clerk.*
A debate arising in the House touching the ancient order and course of the House in the method of raising supplies, and concerning the precedency of the lesser sum;	Resolved, [and it is hereby declared to be an ancient order of the House,] that when [in matter of supply] there comes a question between the greater and the lesser sum, or between the longer and the shorter time, the least sum and the longest time ought first to be put to the question.
The House upon the question did resolve and declare it an ancient order of the House, that when there comes a question between the greater and lesser sum, or the longer or shorter time, the least sum and longest time ought first to be put to the question.	

* Résultat des Assemblées Provinciales, p. 18.

such an opinion [*opinion;*] of the number of persons who concurred in it; of those who differed from it, and why; of the reasons [*motifs*] which occasioned each proposition to be adopted or rejected, in part or in the whole; in short, of the opinions [*avis*] which prevailed generally, *or* of that which was adopted."

"This method," adds the author, "ought always to be that of a committee. The assembly names them, not to pronounce a decision, but to elucidate an affair, and put the assembly in a way to judge."

This elaborate and *careful* plan, which, according to the author's notion, *ought to be the plan of every committee*, affords a pretty strong presumption, that in those assemblies (supposing this account to be a just one) the simple principle of giving a determinate existence in writing to every proposition, and so proceeding, either to receive that proposition (with or without amendments,) or to reject it, was not known. The resolutions of the meeting, to judge from this account, are jumbled with the minutes of the proceedings, and the accounts of the debates: in the conception of the author, they are unquestionably.

As this is a subject of the first importance to the precision of the proceedings in the great national assembly to which it is my ambition to be of use, to the genuineness as well as clearness of the results, and to the efficacious development of their powers, it may be worth while to give this account a pretty minute consideration, for the purpose of comparing the proceedings as here described, with the standard above laid down.

1. "*After having well settled the question* — [*Après avoir bien pose la question.*"] What question? The question, meaning the motion or proposition in question, if delivered in, in writing, by the author himself, can neither require to be settled, nor admit of it. It has settled itself. It may require amending indeed; but that is a very different operation from settling.

2. "After having well settled the question," *an account is given of the different opinions upon it* — [*on rend compte des différens avis.*] What are these opinions? — these *avis?* They are not decisions upon the question: they are not votes given towards forming such decision. Each question, when put upon a single motion, can admit of but one of two decisions — adoption, or rejection: each vote can admit of but one of three modifications — for the question, against the question, or neuter.* *Avis* is perhaps, here, put for *argument* — argument used in course of the debate.

3. "Account is given *of the effect which such or such an opinion produced* — [*de l'effet qu'a produit telle ou telle opinion :*"] — a further reason for supposing that *avis*, as well as *opinion*, here means argument. The effect that a decision produces, requires no account — no separate account: it produces the adoption of the resolution proposed, or the rejection of it: the resolution, if adopted, needs no account — it speaks for itself. It not only does not stand in need of any account — it admits of none: a composition given under that name, if it be in the same terms with those of the resolution, is not an *account* of that resolution, but the thing itself: if in different terms, then, so far as the difference extends, the account it gives is a false one.

A *vote*, if that were meant by *avis* and *opinion*, requires not, any more than the decision it has produced, or failed of producing, any *account:* it is given one way or the other, and the effect of it appears by the decision — by the adoption or rejection of the resolution proposed.

4. *Of the number of the persons that concurred in it* [in such opinion or argument] — *of those who differed from it, and why* — [de celles qui s'en sont éloignées, et pourquoi.] This *why*, this *pourquoi*, I must confess, I know not very well what to make of. I thought the *opinions* or *avis* had been themselves the *arguments*, and included the *reasons:* these *pourquois*, then, must have been the reasons of those reasons.

5. *Of the reasons* [motifs] *which occasioned a proposition to be adopted or rejected, in part or in the whole* — [des motifs qui ont fait adopter une proposition, en partie ou en total.]

The perplexity gets thicker and thicker: here we have not only reasons upon reasons, but reasons upon *them;* for *motifs* must surely here, as in French it does commonly, when spoken of with reference to an opinion, mean reasons — it cannot mean what in English we term *motives*. It can never have been meant, that, in these committees, the several members get up, and render an account of the motives that have given birth to their respective votes; saying, one of them, it was patriotism; another, it was the love of reputation; another, it was sympathy for the proposer; another, it was antipathy to the opposers; another, it was the hope of gaining a personal advantage by it that determined me: as little is it likely that the penner of the report should have taken upon himself thus to answer for each man's motives.

6. *Lastly, Of the opinions* [avis] *which prevailed generally;* or *of that which was adopted* — [enfin, des avis qui ont prévalu généralement, *ou* de celui qui a été adopté.]

This is still more perplexing than before. What means this opposition between *prevailing generally*, and *being adopted?* and how is it that the opinions which may prevail generally are *several*, while the opinion that can

* See Ch. XIV. *Of Voting*, p. 367.

be adopted is but *one?* If by *avis* is meant here *décisions* — decisions of adoption or rejection, on different questions you may have certainly as many decisions — in short, one or other of exactly twice as many decisions as there are questions. If by *avis* is meant here opinions given separately by the different members upon occasion of the same subject— discourses delivered, which if adopted by the assembly would have been so many *resolutions of opinion*, — these, if never put to the vote, are not acts of the meeting — acts of the body, but mere acts of the individuals. Yet after all, of this set of opinions there is (it seems, according to this author) one, and but one, which has been adopted. Has it, then, been adopted? It is then an act of the committee — a resolution of opinion passed by the committee. On the other hand, if only one of the set has been adopted, how is it that the rest,—which, since they are thus constructed with that one, must, it should seem, have been opposite and contrary to it,— can have been *generally received?* A proposition cannot be said to have been generally received by a meeting of any kind, if it has not been received by a majority: and if it has really been received by a majority, how can it fail of having been adopted? An account like this puts one in mind of the grammatical history of the cake: — G got it, and yet H had it.

Considering this confusion as the work of the anonymous author, it would not have been worth all this notice: but the practice, of which the *éloge* is thus given, must surely itself have been very confused, or it could scarcely have given birth to an account so perfectly confused.

Nothing like this is to be found in the reports of any English committee I ever met with or heard of. They do not report so much as their own *minutes;* much less do they report their own *debates:* no *opinion* is there given, which is not the opinion of the whole. Is a resolution of opinion proposed? If rejected, no traces of it appear; if adopted, it is given, not as the resolution of A or B, but as the resolution of the committee. Is a statement of any affair, or history of any transaction, given? One member, it is true, may have penned and proposed one part — another member another part; but neither the one part nor the other would have stood in the report, if they had not respectively been acceded to by a majority of the committee — if they had not, each of them, been the act of the whole.

Were a composition, like the one thus described, presented, under the name of the report of a committee, to a British House of Commons, what would they say? They would say, "This is no report; you must go back again, and make one." They would send it back to be *re-committed.* While A says one thing, and B, neither assenting to nor dissenting from what A has said, says another, this is no report of a committee: the report of a committee is what is said throughout by the major part of the committee, or by the whole.

But these, it may perhaps be observed, are but reports of *committees.* The committees, of which these are the reports, are very small assemblies, composed of a smaller number of members than what is commonly to be met with in the least numerous committees of a British House of Commons. The members may therefore be considered as acting in their individual capacity: and the reports, given under the name of such committees, may be considered as reports made by individuals. The reports of such committees as these may therefore be thus far informal, and yet the proceedings of the entire assemblies, to which these reports are made, be regular and exact.

Unfortunately, the account given in the same book of the method in which the decision of the assembly itself is formed (I should rather say, of the paper published as the decision of such assembly,) seems to indicate but too plainly, that the only simple and true method of forming such a decision is not less widely departed from in the one sort of meeting, than in the other.

"The opinion once formed by a plurality of voices (votes) [*voix,*]" says the author above quoted,* "then comes the time for entering it (writing it) [*l'écrire*] upon the minutes. But this operation (drawing up) [*rédaction*], *requiring a considerable time*, the assemblies name *committee-men* to perform it, and the meeting of the next day opens with the extract of the minutes of the day preceding. This regulation, highly beneficial as it is, *since it saves time*, may be productive however of a mischief."

If this account be just, it is impossible that the principle of the identity between the motion and the act of the assembly, should have been observed in these assemblies. For drawing up such act, no committee could have been either necessary, or of any use: no time could have been saved, but a great deal of time sadly wasted and consumed. The act, upon the only just and simple principle the nature of the case admits of, is already *drawn up* by him who moves it: to enter it upon the minutes is work — not for a committee, but for a copying clerk. Committee-men may be of use, to give a look occasionally to the journals, and see whether the secretary has done his business properly; that is, whether he has entered all the acts, and whether each of them be an exact copy of the original draught: but such occasional inspection is a very different thing from their doing of that business themselves.

* Résultat, p. 27.

The mischief here apprehended by the commentator is, that of the assemblies in general following, upon this occasion, the example which, in a passage which I have had occasion to quote elsewhere, he takes notice of as having been set by the provincial assembly of Tours. This assembly, it should seem, had conceived it proper to see what it was their committee-men had been making them say, and not to let the account thus given stand as definitive, till they, the assembly, had heard it read to them. The commentator, full of diffidence of the assembly itself, lest it should alter its own acts or pretended acts, is as full of confidence in their committee-men. It never occurs to him that, either through design or misconception, the latter can misrepresent, or upon just grounds be suspected of misrepresenting, an act which, under such circumstances it must be so difficult to represent at all, and which in truth can scarcely be said to have existence.

Turn to the journals of these assemblies, and, what is more, to the royal edicts published for the regulation of their discipline, and we shall find them confirm, in this respect, the account given of them by their commentator.

"In the case where divers opinions [*avis*] shall have manifested themselves, the assembly," says the royal edict for Haute Guyenne,* "*shall be obliged* to reduce them to two; and that which has the plurality of votes [*suffrages*] shall form the act of the assembly [*la délibération.*"]

What *must* be done, is done somehow or other, however badly: and therefore, an assembly ordered by royal authority to reduce its *avis* (whatever is meant by *avis*) to two, will contrive to do so. But upon the principle of the identity of the terms of the motion and those of the resolution — and supposing only one motion upon the carpet at a time — and supposing the votes to be given upon that one, no assembly could contrive to do otherwise. *For* or *against* the motion — the motion adopted or rejected — there is no other alternative.

The truth is, that these different *avis*, which the royal penman considers as liable to be produced upon a given subject—these *avis*, as far as they can be said to be anything, seem to have been so many different propositions — so many different motions, which were to be going on and debating at the same time. They are not votes at least; for votes [*suffrages*] it is understood, are to be given upon them. Taking them for motions, why the number of them should undergo this reduction, is not by any means made apparent. If all are consistent, why not let them all pass into resolutions, if the assembly choose it? If any are inconsistent with others that are preferred, the assembly, one should think, might be trusted to for not passing them: if a man has not sense to keep him from falling into inconsistencies, it is not a royal edict that will give it him.

The assembly accepts this regulation,† adding an amendment, palliating in some degree the inconvenience arising from a fixed order of speaking, as hinted at on a preceding occasion,‡ and more fully developed a little farther on.

The case which I should suppose the penner of this edict to have had in view, is that of a number of motions started at the same time, like candidates on an election. In the English practice this can create no confusion; for the one first started must be first disposed of; the question can only be as to the adoption or rejection of that one: the others come on afterwards, as they are moved. I do not say but that this method admits of improvement: hereafter, a regulation will be seen proposed with that view. But, what is the great point, it thoroughly prevents that confusion which on the French method seems to be inevitable.

I set out with observing, that to exhibit as the act of an assembly a proposition which has not been put to the vote, and carried by the majority of votes in that assembly, is to commit a forgery. If credit may be given to an anonymous, but very intelligent author,‖ this forgery is in France a matter of ordinary practice. It is where he has been speaking of the assembly of the States-General; and not only of that sovereign assembly, but of the particular preparatory assemblies collected for the purpose of sending deputies and instructions to that general one. Resolutions [*avis*] says he, are drawn up, frequently when nothing has been put to the vote. *On rédige les avis, et souvent on ne vote point.*

§ 4. — POINT III. *Unity of the subject of debate kept inviolate.*

Question, with Answers exhibiting reasons.

Why not suffer a second proposition to be started (except as excepted) till a former has been disposed of?

Answer: 1. That in the instance of such or such a particular proposition, the assembly may not, by *indecison* with respect to *that proposition*, be prevented from taking a course

* Art. 9, page 14, of the journal of 1779. This of Haute Guyenne is the second of the two original assemblies (Berri being the first,) the constitution of which was taken as a model for the others, since established all together in 1787.

† Procès-verbal de l'Assemblée de Haute Guyenne, 4to, 1779, p. 143.

‡ Chap. IV.

‖ Essai sur l'Histoire des Comices de Rome, des Etats-Généraux de la France, and du Parlement de l'Angleterre, 3 vols. 8vo. Philadelphie, (Paris) 1789, vol. ii. p. 195.

which, had its will been left free to exercise itself upon the subject, it would have taken.

This, we see, is what may be at any time the case, if a proposition, about which the assembly had begun to occupy itself, is thus permitted to be jostled, as it were, off the carpet, by another proposition different from the former, and incommensurable with it, before they are aware.

2. To prevent a degree of confusion, by which, for that time, the assembly may be deprived of the faculty of forming *any will* at all.

Without some such check, nothing is more likely to happen, even without design; and that in any assembly, much more in a new-formed and numerous one. And the endeavour to produce such an effect by design, is one of the most effectual plans that individual fraud or conspiracy can pursue. In this way a thousand propositions may be thrown out, which, had the assembly been left at liberty to occupy itself about them without interruption — in short, had it been left master of its own will, — must have passed.

A proposition (suppose) has been introduced: a debate arises, and in the course of the debate something is started, from which somebody catches, or pretends to catch, the idea of something else that would be very proper to be done. This something else happening to touch upon a more sensible fibre, the next speaker takes this for his theme. Affections grow warm, and crowding about this second subject, the first is insensibly departed from and forgotten. In the same manner, a third takes place of this second; and so on, till men's minds are effectually confused, and their whole stock of time and patience gone.

This divergency is what is the more liable to take place in any assembly, especially in any new-formed assembly, inasmuch as it is what scarce ever fails to take place in private circles. In this case, it is productive of no sort of harm: for amusement, which is here the end in view, is better provided for by rambling freely from subject to subject, than by adhering to any one. But in the case of a political assembly, it is productive of the utmost harm which such an assembly, as such, is capable of suffering.

The more eligible in its nature, and the more likely to have been embraced by the assembly, any of these propositions may be in themselves, the greater is the mischief that may result from such an irregular introduction of it. Introduced singly, each at its proper time, each one might have been carried: introduced, one upon the back of the other, each stands in the other's way — each throws another out, and a confusion is raised to which they all of them fall a sacrifice at once.

The enforcing this law of unity, and guarding it as well from intentional and insidious, as unintentional violations, is one of the uses that concur to evince the importance of keeping the composition, which is the subject of debate, exposed to the view of the whole assembly—But of this in another place.*

British practice. — As to this point, so far as concerns as well the negative put by the general proposition to the introduction of extraneous matter, as the choice of the exceptions, the British practice is exactly conformable to the regulation above proposed. But in respect of the details relative to the mode of conducting the several businesses which form the matter of those exceptions, it has been deemed open to improvement, in a variety of particulars which will present themselves as we advnce.

French practice. — Of the French practice relative to this point, some intimation has been given under the preceding head. What farther remains to be said of it, will more conveniently be referred to the next. The points themselves being so intimately connected, and the practice relative to each being a consequence of the same principle, it is next to impossible, upon any one of these topics, to avoid touching upon the rest.

§ 5. — POINT IV. *The process of debating distinct from, and prior to, that of voting.*

Question, with Answers exhibiting reasons.

Why not allow any vote to be given till the debate is finished?

Answer: 1. That the decision given may not prove an improper one, on the score of its having been built upon *insufficient* and partial *grounds.*

To *vote* for or against a motion, is to judge — to exercise the office of a judge: to *speak* for or against it, is to exercise the function of an advocate. To vote before any one else has spoken in the debate, is to judge altogether without documents — altogether without grounds: to vote while there still remains any one to speak, who has anything to say, is to judge without documents *pro tanto.* Is there any one member whose speech is to be looked upon as proper to be attended to in this view? — so, for the same reason, must that of every other: since, abstraction made of the differences in point of talent between individuals — differences of which no general rules can take cognizance, every man's speech presents just the same probability of affording useful lights, as that of every other.

2. That the decision given may not be exposed to the danger of proving an improper one, on the score of its being expressive of a will *different from the real* will of the majority of the assembly. Conceive a list of members, speaking in a fixed order, and each man

* See Chap. III. § 2, *Table of Motions.*

giving his vote, as his turn comes, at the end of his speech, or without making any speech, as he thinks fit. The first upon the list, after having said what he thinks proper, gives his vote; all the others, down to the last, give their votes on the same side. The last, when it comes to his turn, gives a contrary vote, grounded on arguments which had happened to escape all the preceding voters, but which, when once brought to light, stamp conviction on their minds. What is the consequence? A decision is given, purporting to want but one voice of being an unanimous one: but, in fact, contrary to the unanimous will of all the members whose decision it purports to be.

British practice. — In all political assemblies, the idea of which would be presented by that name to an Englishman unacquainted with, or not thinking of, the state of things in France, the British practice agrees perfectly with the recommendation given by this article — so perfectly, that it is to the rule itself that he would probably stand indebted for the first conception of its being possible to depart from it.

The mode of proceeding in courts of justice on this head, might indeed, if considered in this point of view, furnish an exception to this rule: but in this point of view an Englishman would not be apt to consider it, the business of a court of justice standing upon a footing altogether peculiar in this respect, as will be seen hereafter.

French practice. — The French practice relative to this important point, is so inextricably interwoven with the practice observed in the same country in relation to the other less important points, of which the enumeration has been already made, that to touch upon any one of them, without encroaching upon the rest, is scarcely possible.

The process of speaking seems scarcely to have been distinguished from that of voting, or the thing called a *speech* from the thing called a *vote*, even in idea; the same terms, *opinion* and *avis*, being employed, as we have seen, to denote, indiscriminately, the one or the other, or both together. Not being distinguished in name, they would remain undistinguished in exercise; and each man, in making his speech, whether it consisted of ten words, or the amount of twice as many pages, would of course give his vote at the same time; and that perhaps without suspecting that in so doing, he was doing two different things at once.

But, whatever each man chose to say, whether barely enough to give that signification of his will which a bare vote would give, or enough to make a speech of two or three hours in length, it happened to be so ordered, that each man should say it in a fixed order, as between man and man; such a member, if present, always speaking first — such another second — and so on. *Precedence* — that is, the order of sitting — was carefully settled upon such principles as were thought the proper ones in such case; and *pre-audience*, including speaking and voting — pre-audience, as a matter of inferior importance, was made dependent on precedence. From this combination — of confusion in what required order, and order in what required none, — results an effect which it is difficult to state with any degree of seriousness. The chance a man has of gaining partisans to his opinion is proportioned, not to the cogency of his arguments, but to the fancied height of the place in which he sits. Conceive this regimen adopted by the States-General, consisting (suppose) of 1100 members: he who sits first may hope to persuade 1099; the hopes of his next neighbour are confined to number 1098; and so down to the lowest, who sees nobody on whom his eloquence can make any effective impression but himself.

On the other hand, the chance a man has of forming a right opinion, is exactly in the inverse ratio of the chance he has of gaining partisans to that opinion. He who has it in his power to govern everybody, has it not in his power to receive lights from anybody; he into whose lap the collected wisdom of the whole assembly is poured in a full tide, sees no one to whom he can give the benefit of illumination but himself. If the ingenuity of government had employed itself in considering by what means wisdom might be most effectually disjoined from power, no other method equally happy can possibly have been devised.

One glance more at the regulations of the Provincial Assemblies: they will afford an instructive example or two, of ingenuity and observation struggling against precedent and prejudice.

First comes Haute Guyenne. Strangers to the principle of the identity of the motion and the resolution grounded upon it, they had found themselves entangled, in manner as above noted, with a multitude of *avis*, opinions — things that were neither motions nor speeches, nor votes — but something betwixt all three, springing out of one subject. The king's provisional code had ordered the reduction of these *avis* to two; *viz.* the two which after one round of *avis* had found the greatest number of voices in its favour. The consideration of this article had suggested to the Guyenne committee an imperfect view of the inconvenience of this orderly method of proceeding: the *avis* of a member low in the scale of *opinans*, though it was *possible* it might be the better of the two, could not possibly have so many *suffrages* in its favour as that of a member higher in the scale might acquire. The remedy hit upon was — not to

keep the processes of debating and voting separate—that was a step too wide from precedent and establishment to be thought of, —but to have two rounds of *avis*.* Then (say the committee,) a man who upon the first round has heard the *avis* given subsequently to his own, with the reasons that may have been produced in favour of them, *may*, upon the second turn, sacrifice his own to that of somebody else. That he *may*, is not to be disputed: but will he? Unfortunately, it is not quite so easy to human pride to adopt a right opinion after having avowed its opposite as before: and, if such be the case between equals, how must it be where the conversion cannot take place without mortifying the pride of rank, as well as the pride of wisdom?

This step towards reason was thought, it should seem, too bold. Seven years after this period, the Assembly of Orléans, though willing to do something, had not resolution, however, to venture quite so far.† It was settled, that "for ordinary business there should be but one round of *opinions*, in which a man should be allowed to develope his *avis;* but that in matters that appeared to require discussion, the president, in conjunction with the first *opinans* of each order,‡ should judge whether the matter subjected to *délibération* required two rounds of *opinions*, and that this decision should precede the *délibération*."‖

One assembly there is, in which the process of debating; and that of giving the opinions, are distinguished and kept separate; and this is that of Picardy.§ The province nearest to England has, on this important point, come over to the English practice.¶ This coincidence, however, can scarcely be reckoned other than fortuitous; it goes no farther: these *opinions* are the same indeterminate sort of thing, or nearly so, here as elsewhere: they are not mere speeches indeed, but they are something betwixt motions and votes; they are sorts of things of which an indefinite multitude are liable to start up, and which, in Picardy as in Haute Guyenne, require force to reduce the number of them to two.*

To wean a man completely from an error from which the chains of habit have rendered it difficult for him to break loose, no recipe is so effectual as the indication of its source. In the present instance, the cause of this entanglement of two processes, which in point of utility it is so necessary to keep distinct, may be traced pretty successfully in two circumstances. The one, which however may be looked upon as rather the effect than the cause, is the confusion of ideas indicated by the equivocal nomenclature already noticed: the other is the junction of the two processes in the practice of courts of justice, in which, as we shall presently observe, such a junction stands upon a very different ground, and is in some cases not productive of any inconvenience, and in none, of any degree of inconvenience approaching to that of which it is productive in the case of a political assembly of any other kind.

While no difference was as yet descried between *original motion, motion in amendment, argument*, and *vote;*—while men were as yet to learn how necessary the concurrence of all these objects is to the formation of a rational decision—how distinct they are in themselves, and how important it is to keep them so;—when the art of applying a correction to the original proposition, in such manner as to enable the assembly to choose between the proposition uncorrected and that which would be the result of the correction, was as yet unknown;—when, on offering a fresh proposition in the course of a debate, a man had not yet learnt so much as to ask himself what influence it would have, or what he meant it should have, on the fate of another that was already on the carpet;—what occasion, what warning, what motive should men have had for separating—in short, in this state of the progress of intelligence, what possibility of separating—argument from vote,—and that so perfectly as that all the arguments should be exhibited at one time, and all the votes at another? In common discourse, though the distinction equally exists, no such separation usually takes place; and common discourse is not only the natural, but, till some particular reason presents itself to the contrary, the proper model for regular debate.

* Haute Guyenne, I. 143; anno 1780.

† Orléans, page 168; anno 1787.

‡ By the first *opinans* of each order, I suppose was meant the first *parcel of opinans:* if so, pity but it had been expressed so.

N. B. The whole number of *opinans* stands, under this code of regulations, divided into parcels, four in a parcel, viz. one of each of the privileged orders, and two of the third estate. Of this see more under the next head.

‖ What is meant by the word *délibération* here—whether the *arrêté*—the act or resolution of assembly, which in the French nomenclature is frequently termed *délibération*—or the assemblage of acts whereby these *avis* are respectively exhibited by the individual members—is more than I can take upon me to say: I give the passage as I find it. The same confusion pervades the Berri code; which has served as a sort of model to the rest, and which, in this respect, has been but too faithfully copied.

§ Picardie, p. 184, 13 Décembre 1787; Règlement II. art. 5 and 6.

¶ . . . . Apres la proposition chacun pourra, à son tour, faire telles observations qu'il jugera convenables; . . . .

La discussion de la proposition préalablement faite, ... l'on ira aux opinions.

* Picardie, Reglement II. art. 10.

All objects present themselves at first appearance in the lump; discrimination and separate nomenclature are the tardy fruit of reflection and experience. In Europe, a dog and a horse are become different animals; at Otaheite, the first horse was a great dog.

Not only in the unfettered intercourse of common conversation is this separation neglected, but the case is the same in the regulated practice of the species of political assemblies instituted for the purposes of justice. This practice is the model which the legislators of the modern provincial assemblies, and before them those of the ancient provincial states, would naturally have before their eyes; it is from this source that the spirit of their laws would naturally be drawn.

The mode of proceding in the States-General, which ought naturally to have been the model for popular or pretended-popular assemblies, was too unsettled to serve as a model for anything, even for itself.

Courts of justice must have existed at all times, and everywhere; and everywhere and at all times, the members of them must have delivered arguments, and given votes.

That the regulations given provisionally to the provincial assemblies by royal authority, or those settled by the assemblies, had lawyers for their authors, we are nowhere told, as it is not natural that we should be. That matters of law should be given to a lawyer to draw up, is however nothing more than natural: but to a lawyer, the model of perfection is naturally the practice of his court.

That such should have been the regimen pursued by judges in courts of justice, is not to be wondered at: nor, in courts of justice, where the number of the judges is very small, and which confine their transactions to the business of administering justice, is it to be blamed. The principal courts of justice in France, the courts of parliament, though always abundantly too numerous for courts of justice, were at their first institution less so than at present: and it was at that early period that their practice in this particular must necessarily have been settled.

These judicial assemblies, and the sort of administrative bodies formed by the provincial assemblies, were so far analogous, that both sorts were assemblies of a political nature — both had propositions to decide upon, resolutions to form, and votes to give. But there is one point in which the analogy totally fails; and this point, obvious as it appears when once started, seems totally to have escaped the observation of the man of law. In judicial assemblies, in as far as they act judicially, no resolution comes to be formed, no vote comes to be given — not even that of him who stands foremost upon the list, till after the question has undergone a full and elaborate discussion by advocates on both sides. But in political assemblies, in the narrower sense of the word, in assemblies legislative, administrative, or merely popular, there is no such distinct class of persons; at least none such has, anywhere that I recollect, made its appearance hitherto separate from the rest. In assemblies of these latter descriptions, each member unites in his single person the distinct, and in a certain sense opposite, characters of advocate and judge. By his vote he exercises the latter function; by the part he takes in the debate — by his speech, in a word — and in the case of the author of a motion, by the making of that motion — he exercises the former.

He who, standing first upon the list of speakers, gives his vote at the conclusion of his speech without hearing any of the others, acts exactly as a presiding judge would do, who should begin with giving an opinion in favour of the plaintiff or of the defendant, without hearing a syllable from the parties or their advocates on either side. I mistake; he acts still worse: he decides not *ignorantly*, without hearing anything from anybody; but *partially*, after hearing only on one side. A proposition of some sort or other is upon the carpet; it must have had somebody for its introducer: this introducer has been heard in favour of it; it is therefore upon this partial representation only that the vote of the member who stands first upon the list, must under this regimen be formed.

In the judiciary line, the French and British practice on this head are similar in appearance, without being so in effect. In both instances, each man's vote, it is true, follows immediately upon his speech; but in the British practice this usage is attended with no inconvenience: the senior judge, from being the first to speak and to give his vote, loses nothing in point of intelligence; the junior judge, from being the last, loses nothing in point of influence. Why? Because the speeches they make in public — the speeches they are *heard* to make, are not the speeches by which their judgments have been determined: in a word, their speeches are not debates. What debates may happen to take place among them, are always private; they are carried on in whispers, or out of court among themselves. Before any one begins to speak, every one of them knows the mind of every other: their speeches, accordingly, are addressed, not to one another, but to the parties and the audience. Their object in making these speeches is not to make proselytes of one another: that object is either already compassed, or recognised to be unattainable. Their object, if unanimous, is to instruct the audience, and plead, each man, in favour of the whole number; — if there be a difference of opinion (an incident, in South Britain at

least, very rare) to defend and justify at the bar of the public, each man his own side.

How happens this? Because the smallness of their number renders this kind of concert practicable. In England, in ordinary cases, the number is not more than four; they sit close together: the whisper of a moment is sufficient to inform them whether the opinion of the three junior judges coincides with that of the chief; if it does not, an adjournment of the cause, to give them an opportunity of debating the matter over in private, is the constant consequence.

When the whole twelve form themselves into one court — an incident that does not take place perhaps so often as four times in a twelvemonth—the small increase in number resulting from the junction makes, in this respect, no difference: here, as in the other case, the public declaration of opinions is constantly preceded by private conference.

In the court of justice composed by the House of Lords, the numbers, and other circumstances, being so widely different, the practice is accordingly different. The number who have a right to be present is very large; the number actually present is liable to prodigious fluctuation. The members of this large body are not collected together in one place — are not in the constant habit of living with one another, as are the members of that small brotherhood. Among the Lords there can be no general conference but in a formal debate: accordingly, among them the process of debating is as distinct from that of voting, when they act in their judicial capacity, as when they act in their legislative.

The French parliaments — at least the principal body of that denomination, the parliament of Paris — bear, in relation to the points in question, a much greater resemblance to the House of Lords than to the ordinary courts of justice in Great Britain, and particularly in England. The number commonly present in the House of Lords is scarcely equal to the number commonly present in the parliament of Paris, when all the chambers are assembled. When that body, stepping aside out of the track of justice, takes cognizance of business appertaining to the departments of legislation and administration, its numbers, instead of being less than on the other occasions, are commonly greater; both by the extraordinary affluence drawn by the importance of the business, and by the addition of the peers, whose presence on such great occasions is commonly requested. Yet in no instance, as far as I have been able to learn, does this assembly ever depart from the judiciary usage of confounding the two processes of debating and voting, in manner above mentioned.

§ 6.—POINT V. *In debating, no fixed order of pre-audience.*

Question, with Answers exhibiting reasons.

Why not admit of any fixed order of pre-audience in debate?

Answer: 1. Because a fixed order is unfavourable to the growth of that intelligence on which rectitude of decision in great measure depends; to wit, in as far as intelligence is the fruit of industry, excited by emulation.

A man who finds himself low upon the list, may, in ordinary cases, naturally expect to find his arguments forestalled; and the lower he is, the less will it appear to be worth his while to be at the pains of studying the subject, for so small a chance of distinguishing himself, or being of use. Should superior ability or perseverance now and then get the better of this obstacle, still it is an inconvenience in itself, and a disheartening circumstance to reflect on, that his arguments cannot be produced till after the attention of the hearers may have been exhausted, and their appetite palled.

In this line, as in every other, the less a man's faculties seem likely to be worth, either to himself or others, the less labour will be bestowed in cultivating them.

2. It tends to waste time by increasing the quantity of useless discourse.

What is lost in point of intelligence, may be made up in words. A man who stands high upon the list, standing in that conspicuous station, and finding himself perpetually called upon to speak, may fancy himself bound, as it were, to obey the summons, and speak at any rate, as it were in his own defence. Something he must every now and then say, to the purpose or not to the purpose, willing or unwilling, prepared or unprepared. — "For so many days together, nothing but a silent vote? This will never do: I must make something of a speech to-day, or people will begin to look upon me as nobody."

Thus, while the able and willing are shoved out of the list of speakers with one hand, the ill-qualified and unwilling are dragged into it with the other.

3. It tends to diminish the measure of intelligence imparted to the assembly, and thence to diminish the chance in favour of rectitude of decision, in another way; viz. by preventing that concert between persons possessed of different talents — that casting of the different parts, which may be so necessary to the displaying of the strength of the cause on every side to the best advantage.

One man, for instance, shall be fittest for the business of statement and narration:

Another man, who is capable of urging this or that argument with a superior degree of force, shall be unable to grasp the whole *compages* of the business:

A third, who can begin nothing of himself, shall be excellent at improving a hint by another, or correcting an error, or supplying a deficiency:

A fourth, though sparingly endued with the power of invention, shall be good at summing the arguments offered by others, and putting each argument in its proper place.

A fixed order, with its blind inflexibility, shall chop and change all these parts, turn topsy-turvy the order designed by reason and by nature: the reasoner shall stand before the narrator, and the recapitulator before both.

Setting aside the case of previous concert, and supposing the order to be fixed anyhow, some error may be advanced by a man — say in matter of fact, say in matter of argument, which, as it happens, somebody of those who spoke before him is in a condition to correct, but no one of those who are to speak after him. What follows? That if the rule of fixed pre-audience be observed, the error must pass uncorrected, and be received for truth. So often as this happens to be the case — and there is no occasion on which it may not happen — truth and this rule are incompatible.

4. It tends to strengthen whatever hold might be obtainable by seductive influence; and thereby to throw discouragement in the way of sincerity and truth.

Every man having to say something in his turn, and to show the side he takes, by his vote at least, if not by a longer speech, those who stand lowest upon the list will be obliged, whether they will or no, to see, and it will be known that they see, the part that is taken by every man who stands above them. But of this more fully under the next head.

5. Considered in respect to its influence on the rights of individuals, it puts all the members upon an equal footing: and on this head at least, equality is justice. Whatever be the advantage of speaking before or after another man, no reason can be given why one member should enjoy it in preference to another: the consequence is, they ought all to have an equal chance for it.

In point of real importance, this last consideration rank at a great distance behind the preceding ones. In those cases it is the interest of millions that is concerned: in this, it is the interest of units. But even this ought not to pass unnoticed; for millions are composed of units. And in the present instance, it is the interest of the units that is the most palpable, and the most immediately at stake.

British practice. — The order in which members speak, is that in which they happen to present themselves for that purpose;* which they do by rising from their seats.† In case of doubt which person, out of a number, was up at first, it is the province of the Speaker to decide;‡ that is to say, provisionally; for ultimately nothing can be decided but by the House.‡ Upon each occasion, the race, if so one may term it, is renewed; by starting up second, on any occasion, a man does not acquire the right of being heard first upon a succeeding one.

This mode is liable to inconveniences, which a person not rendered insensible to them by habit, will not find it difficult to divine; and which will be considered, and a remedy endeavoured to be found for them, farther on. But these inconveniences are nothing in comparison of the advantage gained by the avoidance of those which, we have seen, are the inevitable result of every kind of fixed order whatever.

In the British practice, the fundamental principle is equality: and here, in prescribing equality, public utility concurs, as we have seen, with justice. In the particular course taken to enforce and apply the principle, injustice, or at least the danger or appearance of it, as we shall see hereafter, have insinuated themselves. But under the greatest practicable degree of injustice, its efficacy on this head can never fail of meeting with a powerful controul in the influence of chance — that incorruptible power, which in this, as in so many other instances, is the best guardian and firmest protector that equality can have. At the worst, it is but occasional injustice; and between occasional and constant injustice there is no comparison.

French practice. — In the English practice we have seen disorder at the surface — utility and justice at the bottom. In the French, we shall see order at the surface — inconvenience and injustice underneath: the private injustice palliated, or rather modified in different ways; but the public inconvenience remaining unaltered, and in full force.

In the code of regulations adopted by the first of the two pattern-assemblies, the provincial assembly of Berri, the following is the course laid down. The ecclesiastical members are to *sit* and *speak* in the order of their nomination to their respective benefices:‖ the noblesse, in the order of their age:§ the third estate, according to an order which it is declared shall be fixed as between the districts which they represent.¶ The monster equality being thus, by different processes, extirpated from the three different classes of citizens, order — good order, *bon ordre*, as doubtless it appeared — was established, and the duty of the legislator done.

The clergy, it is to be observed, stand first

* II. Hatsell. Commons' Journals, 2d May 1604. † Ibid. 76.

‡ Ibid. 76. Commons' Journals, 2d May 1604.

‖ Berri, Vol. I. anno 1778. Reglement pour la Convocation et la Formation de l'Assemblée, Sect. II. art. 5, p. 35.

§ Ibid. III. 7, p. 37. ¶ Ibid. IV. 13, p. 40.

in dignity; after them the noblesse; the third estate in the rear. Accordingly, the clergy are placed all together at the right of the president; the noblesse on his left; and the third estate, below them on each side.* The important article of sitting being thus adjusted upon strict constitutional principles, the inferior businesses of speaking and voting admitted of a temperament. Accordingly, for the purpose of *opining*, the whole assembly, consisting, when full, of forty-eight members (exclusive of the two procureur-syndics,) is considered as distributed into parcels: twelve parcels, four in each parcel; the four consisting of an ecclesiastic, a noble, and two of the third estate. He who sits uppermost of the ecclesiastics is thus joined with him who sits uppermost of the noblesse, and with the two who sit uppermost of the third estate; and so downwards throughout the list.

If, by this expedient, the individuals concerned were satisfied, that was one great point gained. What was gained in the other points?

1. Nothing in point of emulation.

2. Nothing in point of saving time and words.

3. Nothing as to the convenience of casting the parts, or correcting mistakes.

4. A small matter as to the diminution of undue influence. This influence, as between men of different classes, is reduced in some degree: but the influence of man on man, in the same class, is left untouched.†

5. Nothing in the article of equality. Where all have a right to be upon an equal footing, every scheme of preference is equally unjust.

In the second of these two original assemblies, that of Haute Guyenne, a fixed order is settled upon the same principles, with some little variation as to the details:* and, as a fruit of the experience gained in the two years that had elapsed between the institution of the two assemblies, and as a means of providing the more effectually against any violations of this good order, it is provided, in terms more positive than those employed in the Berri code, that no member shall give his *avis* till called upon by the secretary for that purpose.† The end in view was, I suppose, to prevent interruption: but the means employed are such as render the exercise of every member's right dependent upon their servant's pleasure.‡

In the Assembly of the Notables of 1787, another course was prescribed by royal mandate. The voices ["*voix*"]‖ were here to be taken, not in the order of sitting, which we may be sure was the order of dignity, but in the reverse of that order. This course was directed to be observed as well in full assembly, as in the seven committees into which the assembly was immediately broken down.§

* Berri, Vol. I. anno 1778, 10. p. 31.

† The small utility of the arrangement in this point of view, is more particularly observable in the instance of the ecclesiastical order; in which inequality of dignity is liable to be connected with subordination in point of power. When a bishop, for example, and a number of his diocesans, sit in the same assembly — a case exemplified, perhaps, in every one of these assemblies — none of these subordinates can open his mouth, till after the superior has declared his pleasure. If an historiographer of these assemblies is to be believed,[a] a bishop, in one of them, was explicit enough to declare, that an ecclesiastic ought always to be of the same opinion with his bishop. Admit this proposition, and a good deal of time might be saved from consumption, as well as a good deal of truth from violation. The multitude of the members, one of the most formidable rocks which the institution of the States-General is exposed to split upon, might be most happily reduced by giving, to every bishop chosen, the proxies of as many of his suffragans as are returned with him. I mention this only in the way of illustration, not as affording a specimen of a mode of thinking which can possibly be a general one. The anecdote, probably heightened, or grounded upon some hasty expression, would not have been given by the author from whom I take it, but for its singularity. It would be injustice to the nation, as well as to the order, to view it in any other light.

[a] *Résultat des Assemblées Provinciales*, 8vo. 1788, p. 25.

* Haute Guyenne, page 119; anno 1780, Sect. I, art. 15.

† Ibid. Art. 21, page 121.

‡ Wherever the exercise of a right is deemed invalid till after some act has been performed by a particular individual, that individual, however insignificant in other respects, possesses thereby a negative upon the exercise of that right: and though he might not venture to exercise such a negative upon his own bottom, he might, when supported by a faction.

It was thus the French parliaments, and particularly that of Paris, from having in their custody the registers on which new laws were to be entered, acquired very happily a sort of negative in legislation. It is to some such circumstance, little heeded at its commencement, that arbitrary power owes in many instances its only checks. But in the same way may liberty be checked and fettered by arbitrary power.

‖ What do *voices* ["*voix*"] mean here? Speeches only, or votes only, or both together? The royal mandate does not say, and a stranger may be permitted not to know. In practice, I am inclined to think it was construed to mean votes, or at least the short and summary *opinions* given instead of votes. A debate must have preceded, if what I understand from good authority be true; and that carried on in a mode not only as irregular as the English, but rather more so. Half-a-dozen voices at a time, I am assured, was no uncommon concert; so natural is the connexion between bad government and anarchy.

To this arrangement the dignity of rank found, one may suppose, no great difficulty in reconciling itself. Montesquieu's story of the Spaniard and the Portuguese would naturally come to mind:— "*No matter what the place, so it distinguishes me from you.*"

§ Procès-Verbal, p. 78, in 8vo. Paris 1788.

This plan, with all its impropriety, was no inconsiderable improvement. It was the least bad of all fixed orders that could be devised.* The influence of will on will is thus reduced to its *minimum;* as far as the quantum of influence is to be measured by the degree of dignity. Other advantages might be pointed out, were it worth while to spend words in measuring shades of inexpediency, with perfect expediency in full view.

§ 7.—POINT VI. *Simultaneity of the Votes.*

Question, with Answers exhibiting reasons.

Why require the votes to be given all at once, rather than one after another, according to a predetermined order?

Answer: 1. To save time—of which, in a numerous assembly, the taking the votes one after another, though it were in the most expeditious mode possible, must occasion an enormous waste.

Imagine the States-General of France voting, in the order of regular succession, upon every motion, how much soever in course; and contrast this process with that observed in the British House of Commons, open, as I conceive it will be found to be, to further improvements. In the House of Commons, when there is no division, as is the case with perhaps ninety-nine motions out of a hundred, the business of taking the votes is the affair of two instants: one, in which the affirmative votes—the other, in which the negative votes, are called for. In the States-General of France, under the regimen supposed, that same business would be the affair of about eleven hundred such instants: that is, about five hundred times as much time would be consumed in the latter case as in the former. One might even say more: for when eleven hundred votes are given one after another, accounts must be taken, whatever be the eventual disparity, and a deal of time consumed, in taking care not to omit any man, nor count the same man more than once.

2. To lessen the efficacy of undue influence.

I say only to lessen it; for if two men are absolutely and *bonâ fide* agreed to play the parts of master and slave, or pope and devotee, what possible means will there be of hindering them? Neither the process of crying *Aye* or *No*, nor that of holding up hands, can be rendered so exactly simultaneous, but that, if the slave is *bonâ fide* upon the watch, he may wait to observe the part taken by the master's voice or hand, so that his may take the same. But to the slave who feels an inward disposition to rebel, the practice of simultaneity may upon occasion furnish excuses that may stand a better or worse chance of being accepted:—"I beg a thousand pardons: I took another man's hand for your's." "If I have acted honestly for this once, it was through mistake: the matter appeared unfortunately so clear to me, that I made no doubt of finding your hand on the same side."

Wherever a loop-hole offers itself at which probity may make its escape from the trammels of seductive influence, it is plain that too much care cannot be taken to leave it open. See the section on the cases where the secret mode of taking the votes is the proper one, viz. Chap. XIV. § 2.

The concealment thus recommended is not that which forms the inconvenience, where there is any, resulting from the secret mode of voting. It is only the will of the seducer that is concealed, for the moment, from the knowledge of the voter—not the conduct of the voter that is concealed, at the long run, from the knowledge of the public.

The result of a decision given in this summary way may, it is true, come to be done away by another decision, given on the same question, in the exact and regular mode: but this latter opposes, or at least may be made to oppose, to improbity, other checks which are peculiar to itself: of which in another place.†

British practice.—The mode of voting pursued in the British practice accords thus far with the recommendation given by this theory. In the summary way, the voices given on each side are all lifted up promiscuously, and at the same instant. In the regular mode, on a division, all the feet move promiscuously, and as fast as they can. A division is not conceived to be either a procession or a dance.

In both cases, the practice is not free from particular inconveniences, which will be represented, and remedies proposed for them, in another place. In both cases, the outlines might be better filled up than they are; but the outlines themselves are just.

In point of diminution of undue influence, the advantage gained is perhaps no great matter. It is out of the question altogether in the regular mode, where the part taken by everybody being deliberate and conspicuous, must be observed by everybody: and in the summary mode, it cannot be expected to amount to much on those great questions of national importance, where party puts its shoulders to the task, and the part to be taken in the House is previously settled by most of the members at private or less public meetings.

* It puts one in mind of Solon legislating for the Athenians, and giving them—not good laws, but the best they could be brought to bear. But since that day, national wisdom among our Athenians has made an immense shoot; and they are become ripe for good laws, if ever a people were.

† See Chapter II. *On Publicity with regard to the proceedings of a political assembly.*

But still there are not wanting a multitude of occasions on which, under favour of this part of the discipline, probity may make its escape from undue influence. Let the advantage gained in this way amount to ever so little, it is so much got out of the fire.

French practice. — In the French practice, the speeches, where a man has anything to say, are made in a predetermined order, as we have seen; and as each man's vote comes immediately after, or instead of—in short, is confounded with — his speech, — hence vote follows after vote, as speech does after speech.

Speaking with an eye to the States-General, I have brought to view the enormous quantity of time which, upon this plan of regular succession, the mere operation of *voting* must of itself, in an assembly so numerous, unavoidably consume; but when to this one adds the process of *debating*, and the multitude of speeches which, in an assembly of eleven hundred persons, all picked men, selected for their talents by and out of four and twenty millions of people, may be extorted in a manner by the considerations above mentioned, the imagination starts at the idea.

In a company like the provincial assemblies, consisting of no more than eight and forty persons, this inconvenience might chance well enough not to rise to such a magnitude as to attract notice. But even in an assembly like that of the Notables of 1787, consisting of one hundred and forty-four, it seems already to have been apprehended. For this consideration must, at least, have been among the number of those, in virtue of which such haste was made to break down that assembly into seven committees of twenty or twenty-two each, as soon as formed. In the course of sixty-two days the *plenum* sat but six times: and on none of those days do the transactions, as represented by the *Procès-verbal*, seem to leave any room for a debate. In full assembly, nothing seems to have been done but hearing papers read, and speeches of ceremony pronounced.

Even in the provincial assemblies, consisting of but forty-eight members, it seems to have been a principle, to do the business as much as possible in committees, consisting of no more than a dozen members. In some of them, according to their historiographer,* a regulation is established, not to take into consideration any business in full assembly, that has not, in its passage from the committee in which it originated, gone through the other three. This he looks upon as "necessary, in order to avoid as much as possible the noise and bustle to which debates carried on in numerous assemblies are exposed."*

These observations, and many others that might be added, seem to bespeak a general apprehension of the impossibility of carrying on business in the French mode in *numerous* assemblies; that is, not only in such as would be esteemed numerous in England, but in assemblies, for example, consisting of half a hundred, or even so few as a quarter of a hundred persons. How must it fare then with the States-General, and its eleven hundred members? Is it to have no general will? Is it, like the first assembly of the Notables, to sit for no other purpose than to hear papers which would have been better read than heard, and speeches which might as well have been neither read nor heard?

Is no business to originate there? — nothing to be done but to pronounce definitively, and *in globo*, upon some voluminous draught transmitted from some small and select committee? It is a fallacy, then, to speak of its having a will of its own — it is a fallacy to speak of it as possessing the power of the people. The real possessors of the power of the people are the members of this oligarchy, the select committee. But of this more fully in another place.

Observations. — The circumstance that served us to account for the usage relative to the fourth point, will afford us a means equally natural of accounting for the practice relative to the present head.

Between the practices of speaking in succession, voting in succession, and confounding speech with vote, the connexion is not, it is true, a necessary one. Speeches *might* be made in turn, and yet votes given all at once. Speeches might be made in the order in which persons happened to rise to speak, or in any other uncertain order, while votes were given in a fixed order.

But the connexion, though not necessary, was natural. Why? Because it was natural that judicial assemblies should have served as a model: and in judicial assemblies it was as natural that the judges should speak in a fixed order, determined by the joint influence of rank and seniority, as that each man should speak and vote at the same time.

It was a natural course, which, as far as judicial practice is concerned, is sufficient here: whether, in the instance of that practice it be of all others the most expedient, is a question that belongs not to the present purpose.

CHAPTER VII.

OF THE PROPOSAL OF MEASURES FOR ADOPTION.

THERE ought to be in every assembly one individual officially charged with the *initiative*, that is bound to commence the operations, and to propose the necessary measures. For if no member in particular ought to have a

* Résultats des Assemb. Prov. p. 18.

plan respecting the business to be considered, it may happen that there will be no plan, and that the assembly will remain in a state of inaction.

It is not only necessary that there should be a plan upon each occasion, but there ought to be a train—a connexion, between the projects submitted. It is not enough to provide for the first sitting: there ought to be a general plan, embracing all the requisite operations, disposing them in the best order, and leading them onward to their conclusion.

This *obligatory initiative* naturally belongs to those who convoke a political assembly, and who are best acquainted with the wants of the state. The general distribution of labour is the duty of the administration: the ministers should propose — the assembly deliberate and resolve.

But the *right* of initiation ought not to be the privilege of the executive exclusively: — each member ought equally to possess it. There are three principal grounds for this arrangement:—

1. That the intelligence of the whole assembly may be improved for the general good.

There is as good a chance for obtaining the best advice from one party as from the other. To limit the right of proposing, is to renounce everything which might be expected from those who are excluded: it is to institute a monopoly mischievous in every respect, both because it extinguishes the emulation of those whom it reduces to merely a negative part, and because it may retain the greatest talents in a state of inaction. The most intelligent and clever men may, under this exclusive system, be enchained by those who are greatly their inferiors in genius and knowledge.

2. That abuses may reformed. If the right of proposing belong only to the administration, those abuses which are favourable to it would be perpetual: the assembly would have no direct method of causing them to cease. This arrangement would give to the government a most commodious species of negative as against all measures which were unpleasant to it — a negative without noise and without debate.*

3. That the danger arising from the negative right, when it exists alone, may be prevented. The assembly which should possess the power of rejecting alone, would be tempted to abuse it; that is to say, to reject good measures, either from a feeling of pride, that it might show that it was not a mere nullity, that it might exercise its authority, or that it might constrain the hand of government, and lead it to concede one point that it may obtain another: for the right of refusal may be converted into an instrument of offence, and may be employed as a positive means of constraint. Such a system, instead therefore of producing harmony, would tend to produce discord by creating a necessity on the part of the assembly for the adoption of an artificial conduct towards the executive power.

But it may be said, if the direction of affairs ought to be confided to the officers of the executive power, — if they ought to propose those measures which the necessities of the state require:—how, then, can this agree with the desire which all the members may have of making propositions? For this right, if it be to be efficacious, supposes that the assembly has the power of entertaining them. But if it thus entertain them, the ministerial plan will be liable to be interrupted by incoherent, and even entirely subversive motions: there will be no longer any regular progress; and there may even result from it general confusion in the government.

I can only answer this objection by supposing in the assembly an habitual disposition to leave to the ministers the ordinary exercise of the right of proposing.

The general privilege should be reserved for all the members without distinction; but the right of priority should be conceded by a tacit convention to the ministerial propositions.

It is here that it is proper to notice the conduct of the British parliament.

In the ordinary course of affairs, all eyes are fixed upon the minister: whether he present a plan, or speak in support of it, he is listened to with a degree of attention which belongs only to him. By a general, though tacit arrangemnt, important business is not commenced before he arrives.

He proposes all the principal measures—his opponents confine themselves to attacking them: in short, he is the director, the prime mover, the principal personage. Still he has not by right the slightest pre-eminence: there is no rule which secures to his motions, a preference above those of any other member; — there is no rule which gives him a right to speak first — it is an arrangement which exists only in virtue of its convenience and its utility. Whilst the minister possesses the confidence of the majority, he is sure to preserve the right of the initiative: when he loses this confidence, he cannot much longer remain minister, but must give place to another.

It may be well here to attempt to dissipate an error which may justly be called popular, both on account of the little reflection which

* In ancient times, the Scottish parliament was subject, as to the order of its labours, to a committee named by the King: the Lords of Articles alone had the initiative of all measures. They prepared beforehand everything which was to be presented to the Assembly, and consequently had an absolute negative, much more powerful than they could have had after the debate. — Robertson's History of Scotland, Book I. Reign of James V. [They were not named by the King, but by the several Estates of the Parliament.—*Ed.*]

it discovers, and the number of those who adopt it. This error consists in concluding, that an assembly like the House of Commons is corrupt, because in its ordinary course it is led by the ministers. This pretended proof of the corruption of the assembly, or its subjection, is, on the contrary, a real proof of its liberty and its strength. Why does the minister always take the lead in Parliament? It is because unless he had the power thus to lead, he would no longer be minister. The preservation of his place depends upon the duration of his credit with the legislative assembly. Were we to suppose all the members endowed with the most heroic independence, matters could not be better arranged than they are at present.

CHAPTER VIII.

OF THE DIFFERENT ACTS WHICH ENTER INTO THE FORMATION OF A DECREE.

THOSE who pay only a superficial regard to a political assembly, may think that there is nothing more simple than a *motion*, a *debate*, a *decree*. What is there here which is the object of science or art? The ordinary affairs of life call us all to propose, to deliberate, to decide. There are scarcely any notions more familiar than these.

It is true, it is easy to form a conception of these operations, but it is difficult to describe them. In this respect, it is the same with the actions of the mind as with those of the body. To move the arms, requires but a moment: to explain this movement — to describe the muscles which perform it, requires great anatomical knowledge.

Let us trace the formation of a decree. — The work which serves as its foundation, is a simple project proposed by an individual; when he presents this project to the assembly according to the prescribed forms, he makes what is called a motion.

The original motion having been made, every posterior motion with regard to it can only have one of two objects—either to *amend* or to *suppress* it. There are, therefore, two kinds of secondary motions: —

Emendatory motions.
Suppressive motions.

The first include all those which modify the original motion; since all these modifications may be considered as *amendments* — that is to say, ameliorations or corrections.

The second class will include all those which directly or indirectly tend to cause the original motion to be rejected; as by demanding priority in favour of some other motion, or by proposing an adjournment of the question for an indefinite time, &c.

In order to produce a decree, only three acts are absolutely necessary: — 1. To make a motion; 2. To vote; 3. To declare the result of the votes.

But before arriving at the conclusion, there are, in the ordinary course of things, many steps or intermediate acts proper to be taken.

We shall here set them down in chronological order: —

1. Previous promulgation of motions, projects of laws, and amendments.
2. Making the motion which exhibits the project.
3. Occasionally ordering it to be printed and published.
4. Seconding the motion.
5. Deliberating upon it.
6. Putting the question.
7. Voting summarily.
8. Declaring the result of the summary voting.
9. Dividing the assembly — that is, demanding distinct voting.
10. Collecting the votes regularly.
11. Declaring the result.
12. Registering all the proceedings.

CHAPTER IX.

OF THE PROMULGATION OF MOTIONS — OF BILLS — OF AMENDMENTS, AND THEIR WITHDRAWMENT.

IT is proper that the assembly should previously have before its eyes a statement of the business with which it is to be engaged, that nothing may be left to chance, and that it may not be exposed to surprises. It ought to impose on all who wish to present any motions to it, the obligation of duly preparing them, and making them known. A discussion, the object of which has been previously made known, will be the result of more deliberation, and consequently shorter: the reasons for and against, having been the subjects of meditation, the debaters will have ascertained their strength, and taken up their positions accordingly.

This object may be accomplished by a single regulation. Let the secretary open three distinct registers—for Motions, *Bills* or projects of laws, and Amendments; every member being allowed to present to him a motion to be registered; and all motions, after having been printed in a journal which should only have this object, should come before the assembly in the order in which they are registered, subject to the reservation of which we shall presently speak.

The journal of motions being published daily, those who wish to propose any amendments should be bound to make them known beforehand, by presenting them to the secretary, who should transcribe them in his register, and cause them to be printed in the journal of amendments.

The same steps should be followed with respect to bills: they should be inserted in a separate register, in the order of their presentation; but they ought not to be introduced into the assembly until three months after their inscription, unless upon special application this period should be shortened.

Such ought to be the foundation of the arrangement for the table of occupations, which might be called, as in the British houses of parliament, The order of the day.

But this inflexible order for motions and bills, this arrangement founded only upon the circumstance of anterior registration of accidental priority, would be liable to the most weighty inconveniences; it might prove destructive of real order, of that order which belongs to the train and connexion of matters, and thus prove incompatible with the liberty of the assembly. Because one motion has been placed upon the list before another, it does not follow that it deserves the preference: the last in date may be the first in importance.

It would even be impracticable to subject all motions to an absolute rule requiring previous registration. Unexpected incidents demand sudden measures; and in the course of its discussion, a subject may assume altogether a different appearance; a change made in one part of a project, may require an alteration in another — an unexpeted breach must be repaired by sudden expedients.

The influence of a list of motions is therefore reduced to this: — it would serve as a guide for the ordinary progress of the debates — it would present a general picture of the labours; but it would not restrain the liberty of the assembly, which ought to be able at any time to accelerate certain motions, or to receive new ones which have not been registered.

What has been said respecting motions is equally applicable to bills: but a bill admits of greater delay than a motion; and an interval of three months would not in general be too great between the presentation of a bill to the assembly, and its passing into a law. If it have been possible to do without a given law during the course of past ages, it is possible to do without it at least three months longer. Besides, as soon as a law is proposed, the whole of the nation is more or less interested: the object is permanent; it ought therefore to be known to the public, and all the information possessed by the different parties in the kingdom ought to be collected concerning it; unless it be pretended that the deputies, by a miraculous concentration, not only possess all the judgment and knowledge of the whole nation, but even of the world itself. Laws ought to be founded upon facts; but inasmuch as the facts are particular, they cannot be collected, unless the necessary time be allowed to the parties interested to present them to the legislators.

But in respect of bills as well as motions, an inflexible rule is not required: latitude must be left for unforeseen cases, and especially in favour of the government, which is charged to provide for urgent circumstances. If after an insurrection, or on the eve of an invasion, an interval of three months were required after introducing a bill before it were passed into a law, the evil might have been consummated before it was possible to consider of the remedy. This would be to play the engines when the fire was extinguished.

It may be remarked, that the plan here proposed differs from that of the English parliament, every member having here the right to introduce a bill; whereas in the English parliament a bill cannot be introduced without leave given by the House—a practice well calculated for preventing the consumption of time upon frivolous or dangerous projects of laws: but when a member moves for leave to introduce a bill, the House must consider whether it will admit or reject it. This power which it now exercises upon the motion, I propose that it should exercise over the bill at the moment in which it will be presented; that is to say, that the assembly should then decide whether it will entertain it or not; because it will then decide upon better grounds, as the bill will then have been published.

It is sometimes the custom that bills should be printed before the debate; but this is not the case except upon special motion, which motion is sometimes rejected; — and, when printed, they are only distributed to members of parliament. In this respect there is a fundamental error: the printing ought to be the rule, and also the public sale of such bills. Before the invention of printing, and when the art of reading was unknown to three-fourths of the deputies of the nation, to supply this deficiency, it was directed that every bill should be read three times in the House. At the present day, these three readings are purely nominal: the clerk confines himself to reading the title and the first words. But a most important effect has resulted from this antique regulation. These three readings have served to mark three distinct degrees — three epochs — in the passing of a bill, at each of which the debate upon it may be recommenced at pleasure.

Motions and bills being thus printed and published in journals destined to these objects alone, a regulation should be made, that amendments should be printed and published in the same manner. Why should they not be? If I wish to oppose a motion, ought my intention to come upon the assembly by surprise?—ought its author to be deprived of the knowledge of my objections, and of leisure

to prepare an answer to them? — ought I to be allowed to take advantage of him by an unforeseen attack? If I am only anxious for the success of my own schemes, the unforeseen amendment will best suit my purpose; but if I only desire the success of reason, I ought to make it known before the debate.

If all the amendments are previously published, and presented all together, the assembly will have before its eyes a complete picture of the subject of discussion — a picture which will itself be a safeguard against the inconsistencies and contradictions which are so likely to be introduced into a composition of which all the parts are only considered successively. The more completely it is possible to present them simultaneously, the less is the exposure to this danger. This is the grand advantage of synoptic tables: the reciprocal dependence and union of all the parts is at once perceived: any incoherence strikes the eyes.

But the rule ought not to extend to the exclusion of amendments arising at the moment; for new ideas may spring out of the debate itself, and to reject a salutary amendment because its author had not foreseen it, would be an absurdity. All that can, and all that ought to be required of him, is to declare that the delay in the announcement of this amendment was not intentional — is not insidious; that he did not intend to take the assembly by surprise. The nature even of the amendment will indicate the motive which gave rise to it.*

When a member has caused a motion, a bill, an amendment, to be inscribed in the register, he should not be allowed to withdraw or abandon it, without leave from the assembly. A simple prohibition alone is not sufficient in this respect: it ought to be an inflexible law. If the author of the act in question be not present on the day fixed, to support it—unless there be lawful reason for absence, he ought to incur the censure of the assembly, and his name should be inscribed in a separate book, having for its title, *List of the deserters of motions*, &c.

This rigorous law is requisite — 1. In order to prevent thoughtless motions, and the confusion which would be produced by the false appearance of a great mass of business which would vanish at the moment in which it was touched.

2. To prevent the destruction of public confidence by accustoming the people to see that the motions which are announced are dropped by neglect.

3. To prevent the abuse which might be made of this instrument by announcing motions which there is no intention to support, either for the purpose of spreading alarm, or to affect the public funds; or for the purpose of preventing other parties from registering their motions or their bills, by an apparent monopoly of business; and because the evil which an individual could effect in this respect would be susceptible of the most alarming extension by means of combination among the members of a party.

CHAPTER X.

OF THE DRAWING UP OF LAWS.

WE proceed to consider the motions as compositions destined to become laws, and be

* If it be necessary that motions should be composed beforehand, in order that they may be presented to the legislature, which is composed of the élite of the nation, — for a much stronger reason is this precaution indispensable with regard to popular assemblies, which are formed and dissolved in a day, and which can have little or no practice in the art of debate.

Such assemblies often take place in towns or counties in England, for the purpose of presenting petitions or addresses, either to the King or the Houses of Parliament.

If in these assemblies an individual propose a petition or address previously prepared, his antagonists seldom fail to draw from this circumstance an argument in its disfavour. There is indeed a term of ridicule for the designation of such previously prepared motions; they are called *pocket motions* and *pocket petitions*. By these terms an intention is imputed to their author of surprising and deceiving the assembly, by causing his own personal ideas to be received as a public act.

There is in this suspicion a mixture of reason and error — of inadvertence and reflection.

The inadvertence consists in not considering that a motion, which is to be the act of all, must begin by being the act of one individual, — and that a writing of this kind, as well as every other writing, ought to be the better, precisely because it is the work of time and reflection.

But, on the other hand, it is an instinct of reason to distrust the ascendency which one individual may obtain over an assembly by proposing a measure which he had prepared at leisure, but upon which the assembly is called to decide at once, without having had time to examine its foundations and consequences.

What follows? Ought no one in a popular assembly to propose any motion previously prepared? This certainly ought not to be the rule,— but the rather, that before the day of assembly, the motions intended to be made ought to be published.

There exist, in some assemblies of this kind, regulations which prohibit their convocation without a public declaration of the object of the meeting. This regulation ought to be universal; and there ought to be added to it, as a necessary condition, that the principal motion in its totality should be annexed to the act of convocation; that there should be a sufficient interval to allow of the publication of rival propositions, and that no motion should be presented to such assemblies, which had not been previously made known to the public. Will it be said, these are fetters and stumbling-stones for freedom. This would be a mistake: they are parapets upon the edge of precipices. Everything which renders reflection and order necessary in the proceedings of a free people is the assured safeguard of their rights.

presented to the examination of the assembly. In this respect it is desirable that they should possess that form which will allow them to be discussed in detail, and amended.

Regulation cannot prescribe perfection in style; but there are certain defects which it may prevent, certain conditions which it may impose, because every one may be subjected to them. The four following points may be prescribed: —

1. Brevity in the articles.
2. Simplicity in the propositions.
3. The pure expression of will.
4. The complete exhibition of all the clauses which the law ought to contain.

If these conditions are observed, whatever may be the extent of a motion, it will be of a manageable and ductile form; it will be easy to consider it in all its parts, and to amend it.

1. Brevity in the articles.—What is meant by an article is, so much matter as it is intended to put to the vote at one time. The longer the articles are, the more difficult is it to understand the whole together, and distinctly to see all the parts. But is it sufficient to recommend brevity? No: the force of a law ought to be given to this precept, by declaring that no project of a law, containing more than one hundred words for example, should be received, unless it were divided into numbered paragraphs, no one of which should exceed the above measure. This expedient, altogether singular as it may at first appear, is however the only one of absolute efficacy.* When it is necessary to present a long train of ideas, it is proper to assist the understanding by brevity of style. Each separate sentence forms a resting-place for the mind.

The paragraphs in a law ought to be numbered. There is no means more convenient and short for citation and reference.

Acts of parliament are exceedingly defective in this respect. The divisions into sections, and the numbers which designate them in the current editions, are not authentic. In the parchment original, the text of the law — the whole act, is of a single piece, without distinction of paragraphs, without punctuation, without figures. The word section is not even met with there, nor anything which corresponds with it. How, then, is indication made of the termination of one article and the commencement of another? Always by repeating the same formula, the same introductory clause, — *and it is further enacted by the authority aforesaid*, or some other phrase to the same effect.

This is a species of algebra, but of an opposite character. In algebra, one letter supplies the place of a line of words; in this, a line of words very imperfectly supplies the place of a single figure: I say very imperfectly, for these words serve for the purpose of division, but they are of no use for the purpose of reference. Is it wished to amend or repeal one section in an act? As it is impossible to point out this section by a numerical reference, one is obliged to do it by circumlocutions, which produce repetitions and obscurity. It is partly from this cause that acts of parliament are unintelligible compositions to all those who have not made them the object of long study.†

The first acts of parliament were passed at a period in which punctuation was not yet in use — in which the Arabian figures were not known. Besides, the statutes in their state of primitive simplicity and imperfection, were so short and so few in number, that the want of division could not produce any sensible inconvenience. These things have remained upon the same footing, partly from negligence and routine, but much more so from a secret interest on the part of the lawyers, who have found their advantage in this obscurity of the legal text, and who oppose to every reform the bugbear of innovation. Our forefathers lived for ages without the knowledge of commas, stops, and figures: why should they be adopted now? The argument amounts to this — Our forefathers lived upon acorns and mast; corn is therefore a useless luxury.

2. Simplicity in the propositions.—This is the principal point: the rule prescribed above respecting brevity, is established essentially on account of this.

Every article ought to be reduced to a pure and simple proposition; or at least, an article ought never to include two complete and independent propositions, of such nature that the same individual may approve one and reject the other.

Clearness would be carried to the highest point, if each article presented a complete sense, without reference to any other; but in a composition which has many parts, this species of perfection is impossible. The idea even of arrangement excludes that of independence.

A mathematical proposition is demonstrated by reference to propositions previously demonstrated; and in every series of reasoning, the links are multiplied in proportion as they are removed from the first step.

Among *conjunctions*, there are some which afford a mischievous facility for binding together an indefinite number of sentences into one. Of this kind are, in French, *d'autant que, considerant que;* in English, *whereas;* in Latin, *quandoquidem*. The introduction of

* The longest paragraphs in the Code Napoleon do not exceed one hundred words, and there are very few of that length.

† See *General View of a Complete Code of Legislation*, Chap. XXXIII. *Of the style of the Laws.*

these phrases is a principal fault in the style of the laws: by means of them, a mass of confusion is created; objects which it is most desirable to keep apart, being thus without reason, oftentimes coupled together.

But if the propositions ought not to be independent one of another, they need not be made *complex*.

A complex proposition in matters of law, is one which includes two propositions, one of which may be approved, and the other disapproved.

The following question, proposed to the Notables in 1788, may serve as an example: it referred to the composition of the States-General: —*Ought certain qualifications to be required of the electors and the persons eligible?* By the form of this phrase, two distinct propositions are presented, as if they formed only a single one.

Ought certain qualifications to be required of the electors? —

Ought certain qualifications to be required of the eligible? —

These are two questions, so distinct that each ought to be decided by different considerations, which may perhaps lead to a negative with regard to one, and an affirmative answer as to the other. But by uniting them in this manner, the mind is led into error: it is led to consider them as so connected together, that it is proper to give to them one common answer, either in the negative or affirmative.*

Suppose that a proposition, which is presented as a single one, really consists of two propositions—that you approve the one, that you disapprove the other: if it remain undivided, whatever may be the decision, one proposition will be passed in opposition to your will; — if it be divided, you are free to choose—you can vote against the one without voting against the other; and this, which may happen to one individual, may happen to the whole assembly.

By means of complex propositions, an assembly free from all exterior constraint, may cease to be free by a species of internal constraint: a good law may be used as an instrument to compel the passing of a bad one.

Conjunctions may arise, in which an assembly may be compelled to sacrifice its most important rights. A certain law may be proposed to it, not only good in itself, but even necessary to its own preservation, or the preservation of the state; and to this law may be joined another, by which it may be deprived of some of its essential prerogatives. What can it do? It is obliged to submit. It is in the situation of the patriarch, who, pressed with hunger, sold his birthright for a mess of pottage.

This Machiavelism, it may be said, is a gratuitous supposition—a pure fiction. But it is not: history furnishes numerous examples of it. In the ancient republics, the *initiative* of the laws belonged exclusively to a senate: the people had no other alternative than that of approving or rejecting the whole together; the liberty of choice was not left to them; — their chiefs made them purchase a desired law, a necessary law, at the price of some other law unfavourable to their interests.

3. Another principle of composition: *Employ only a pure and simple declaration of will, without intermixing therewith, reasons, opinions, or fancies, distinct from that same will.*

To assign the reasons for a law is a separate operation, which ought never to be confounded with the law itself. If it be desirable to instruct the people, it may be done in a preamble, or in a commentary which accompanies the law; but an imperative law ought only to contain the simple expression of the will of the legislator. Intended to serve as a rule of conduct, it cannot be too simple, too clear, too free from dispute. If reasons and opinions are intermingled with it, all those are ranged against the law, who do not approve the reasons or opinions which it expresses: instead of becoming stronger, it becomes more feeble; an instrument of attack is prepared for its adversaries, and it is delivered up to their disputes.

A single epithet is sometimes sufficient to alter the simple expression of the will. The same effect may result from the use of a term which implies blame or approbation, when it would have been proper to employ a neutral term—*heretic*, for example, instead of *dissenter*—*innovation* instead of *change*—*usury* instead of *illegal interest*.

These eulogistic or dyslogistic terms produce all the inconveniences which we have developed above: they include complex propositions; they not merely state a fact, upon which all the world may be agreed, but also an *opinion*, which may be received by one party, and rejected by another.

Let us give an example: — "It is decreed that no heretic shall be allowed to sit in this assembly."

First proposition: "It is decreed that no man who is not of the established religion of the state, shall be admitted to sit in this assembly."

Second proposition: "This assembly declares, that all those who profess any other religious opinions, merit the odious denomination of heretics."

Here are two propositions altogether dis-

* This sophism corresponds with that which in the logic of Aristotle is designated by the words —"*Secundum plures interrogationes, ut unam*—are honey and gall sweet?" This is a *jeu d'esprit* for perplexing children, but it is often employed in legislation for deceiving men.

tinct and foreign to one another. The one declares a resolution relative to a fact; — the other declares the state of the opinions and affections of those who vote. The same individual might adopt the first, and reject the second.

Thus to unite into one proposition, two different things, is to commit a species of falsification, and to destroy the freedom of voting, from which no benefit can result.

Hence, from inserting in the body of a law, opinions or reasons foreign to the law, the measure may be exposed to rejection, although conformable to the general wish of the assembly.

This may happen, because, although they may be agreed upon the measure, the voters may differ much with regard to the reasons which lead them to adopt it; and if the reasons which are assigned, are opposed to the opinions of the majority, they will experience a very natural and just repugnance to profess opinions which they do not hold. To require them to pass such a law is, in fact, to exact a false declaration, and make them tell a lie in the law.

Let us imagine the following proposition: — "Considering that there is no God, all penal laws relative to the divinity are abolished."

Even should all the members of the assembly be unanimous in favour of the abolition of these penal laws, there might not perhaps be found a single one who would not be shocked by this declaration of atheism, and who would not rather choose to reject the measure altogether, than to obtain it at this price.

It would seem that in a free assembly each proposer of a motion ought to observe this rule, if it were only as a measure of prudence, since an accessary of this nature can only tend to expose the principal motion to be rejected.

But the spirit of party does not reason thus. The more clearly a motion includes any clause offensive to its antagonists, the more clearly it proves the strength of those who cause it to pass: their triumph increases with the mortification of their antagonists.

We will give an example of this petty war of parties; we shall seek it in a remote period, although it would be easy to find specimens nearer to our own times; we shall see a motion produced in this spirit of hostility, applied in an opposite direction by the insertion of motives and opinions which presented it under an aspect altogether new.*

"A motion was made, and the question being proposed, that it be an instruction to the said committee that (in order to restore in some measure the trade of this kingdom) they do consider of the proper means to take off the duties upon soap and candles (which are so very burthensome to the manufacturers, as well as the poor in general.")

The intention of the two phrases included in the parentheses is clear. The opposition wished to throw odium upon these two taxes, without considering that similar means might be applied to all the taxes without distinction.

The two clauses were first excluded by two very proper amendments. But this triumph was not enough: the ministerial party, wishing to throw out the motion by appearing to amend it, caused the following clause to be inserted: —

Taxes "granted and made a security for several large sums of money advanced for the service of the public, upon parliamentary credit, the greater part of the surplus whereof belong to the sinking fund, appropriated to the discharging the national debt."

It need scarcely be added, that the motion thus altered, no longer agreeable to the one party or to the other, was thrown out by common consent.

4. *A bill ought to contain a complete exhibition of all the clauses that the law ought to contain.*

This has reference to certain terms which are liable to be exchanged for terms of the same kind: for example, one quantity for another quantity, one number for another number, one portion of time for another portion of time, &c. *The imprisonment shall be* [*for a year.*] *The fine shall be* [*one tenth part of the parties' income.*] *The reward shall be* [*twenty pounds sterling.*]†

In the projects of bills which were presented to the British parliament, the custom was to leave these points in blank between two crotchets thus: The imprisonment shall be [;] the fine shall be [.]

The points thus left in blank were those respecting which there is great latitude of choice. The author of the bill has no determinate reason for the choice of one term rather than another. The first debate turns rather upon the principle of the measure, without regard to these points. They are determined in committee upon the motion of some member. The journals of the House of Commons present many examples of cases in which it has been unwilling to receive bills, because the author, instead of leaving these blanks, had filled them up.

It was said, that liberty was thus better secured; so long as no term is fixed, there is greater latitude of choice.

I cannot perceive the force of this reason. Liberty exists upon this point as well as upon

* Journals of the House of Commons, Vol. XXI. p. 235, 24th February 1728.

† These exchangeable terms may be called *congeneric competitors.*

every other part of the bill. It is lawful to propose the smallest number in place of the greatest, one place instead of any other place, one quantity instead of any other quantity, and so of the rest.

On the other hand, the discussion cannot but be improved, when it has a determinate foundation upon all points. It is necessary at last that the blank should be filled up—that some one should propose a term; and who is better able to do this, than the author of the motion?—from whom can we expect greater knowledge of the subject?* If no one be obliged to think about the matter, is it not to be feared that these blanks will be filled up with indiscreet precipitation, as details of trifling importance.

This custom of leaving blanks most probably arose from the prudence of the framers of the laws. "If," they may have said, "the term be left blank, the ideas of nobody will be hurt; but if a specific term be offered, which of course will not please everybody, the loss of a number of votes is risked upon this point alone." This train of reasoning is not unfounded; since nothing is more common in political assemblies, than that want of candour which fixes upon the first objectionable matter of detail, which might easily be remedied, and converts it into a radical objection to the measure in which it appears.†

CHAPTER XI.

OF DEBATES.

§ 1. *Of the Opening of a Debate.*

OUGHT a motion to require to be seconded? A motion is not entertained by the House of Commons, until it is supported by some one beside its author; that is to say, until it is seconded.

This regulation is considered proper, in order to prevent the introduction of motions which would consume time without producing any fruit. Before occupying the time of the assembly, the proposer should consult a friend. If he cannot find a single approver, where is the evil of abandoning his motion?—what chance has he of persuading the majority, if he have not succeeded with the man of his choice?

But this method has but little efficacy: it has none against party motions—none against a man who in the assembly has a civil or an easy friend—none against two fools or two madmen, who are determined to support one another.

Besides, it is only applicable to original motions, and not to incidental motions; that is, to those which arise in the course of the debate—to those amendments respecting which there is no opportunity of concert with any person.

It may be objected against this custom, that it tends to discourage those who have most need of particular encouragement—of isolated persons, jealous of their independence, not wishing to connect themselves with any party. Should a man of this temper, after two or three trials, find no one to second him, this would be sufficient to dishearten him. But he ought not to conclude that a motion is frivolous or absurd, because at the first glance it has been rejected in this manner. How many other reasons, beside that of the demerit of the motion, may have operated to produce this refusal to second it! One may not have chosen to put himself forward; another have not liked to act the part of subaltern; a third have foreseen that it would not be successful; a fourth, that it would have made others his enemies. Many may have refused on grounds altogether foreign to the object of the motion.

When a rule operates only as a restraint, if it be not useful it is mischievous.

The House of Lords has never recognised this rule, and no one has found out that any inconvenience has resulted from the want of it.

Before the author of a motion is permitted to speak upon it, the motion ought to be read.

The motion is the only subject to which his speech ought to apply. If its subject be unknown, the speech will lose a great part of its effect. It is impossible to judge of the force or weakness of the arguments, unless the object to which they refer is clearly present to the mind.

There is not a more efficacious rule than this for preventing useless discourses. If a member who had no motion to make were to begin to speak, he would find himself obliged at the first moment to give a justifying reason for so doing: if he had none, he would be reduced to silence.

In the House of Commons, the rule is, not to speak, but upon an admitted motion, or for the purpose of introducing one; but as it is not requisite to begin by presenting a motion, it sometimes happens that long speeches are made, which are not followed by a motion.

This is an example of those laws which would be so good, so advantageous, provided only that they were observed.

In the English practice, the custom is to state beforehand to the House, more or less of the object of a motion, according to the supposed degree of its importance. But this statement is confined to a general indication: the whole motion is neither announced, nor

* These blanks are now always filled up in a type of a character different from that of the other parts of the bill. — *Ed.*

† For the other rules relative to the drawing up of laws, see also *General View of a Code of Laws*, Chap. XXXIII. *Of the style of the Laws.*

reduced to writing. Is not this a defect? Is it not stopping half way? Certainly the same reasons which lead you to require that a motion should be announced beforehand, ought to make you desire that it should be presented complete. Is it not ridiculous to say to an assembly of legislators—"Divine, conjecture, imagine what the motion will be of which I have told you the title?"—and to hold their curiosity in suspense, as if it were necessary to excite a dramatic interest, or to catch them by surprise?

The terms of the motion not being previously known, it is not possible to prepare amendments: hence, everything concerning them is a scene of precipitation. As they are proposed without plan, they are combated under the same disadvantage: they too frequently present vague and incoherent ideas, and are crude and indigested productions: but the greatest evil which arises, is that which it is not possible to see or to appreciate—the negative evil, the evil of privation; that is to say, the non-existence of the useful amendments which would have been offered, if leisure for reflection had been afforded by a previous knowledge of the whole motion.

We have made one step. The motion being read, its author ought to be allowed the right of pre-audience. It cannot be presumed that any other person can present the reasons for it, with more advantage than himself.

It is evident that no person ought to be heard against a motion, before some one has spoken for it. For if there be no argument to be produced in its favour, the combating the motion is loss of time. The arguments for, ought to appear first, that those who oppose them may have a fixed point of attack, and not wander into vague conjectures.

In an assembly in which the members sit whilst they speak, it would be proper to agree upon a word—for instance, *dixi*—which should mark the close of a speech. This final word would prevent that species of preparation, that indecent impatience, which is manifested in an assembly where those who wish to speak, watch all the accidental pauses of the speaker, and do not wait till he has finished before they begin.

If the member stand up whilst he speaks, the end of his discourse will be marked by his sitting down; and this gesture will more certainly reach the eye, than a word reaches the ear. The above rule would therefore be more necessary in an assembly in which the members sit whilst speaking, than in one in which they stand; but it would be useful everywhere, as a means of preserving the speaker from the fear of interruptions, and of conducting the debate with more propriety.

In a large assembly, the person speaking ought to stand. In this attitude, his lungs have more force, and his voice is more free—he exercises a greater ascendency over the auditory—he more readily perceives the impression he produces. But this ought not to be made an absolute rule, because it is not possible to fix the limits between a large and small assembly: besides, there are infirm persons who have sufficient strength for speaking, who are not able long to remain standing. A wounded officer ought not to be deprived of the right of speaking for his country. The last brilliant efforts of his eloquence were uttered by Lord Chatham, when he was feeble and languishing, and almost obliged to lie upon his seat.

§ 2. *Of free and strict Debate.*

There ought to be two kinds of debate: in one, replies should be allowed; in the other, not. The first of these I should call *free*, every member being allowed to speak as often as he pleases; the second I should call *strict*, every member, with a single exception, which will be shortly noticed, being allowed to speak only once.

The strict method may perhaps be necessary in large assemblies, where there are many who wish to speak. It becomes necessary, upon the principle of equality, to secure to each member the right of being heard: there would be a kind of injustice in allowing any one to speak twice, whilst there were others who had not once been heard. If, then, there be a superfluity of speakers—that is to say, more than can be conveniently heard, consistently with the speedy progress of business—the exclusion of replies becomes a necessary law.

But still the free method possesses great advantages. In an argument between two persons, the discussion is better followed—the reasoning is more connected, than when many persons are engaged. Each reply tends to increase the information received, and to fortify the impression made. The debate becomes animated and more interesting: each one lends his attention to the argument—endeavours to understand it, and to foresee the reply it will call forth: no movement is either lost or retrograde—every step taken leads on to the conclusion. This interest is either weakened or disappointed whenever a new speaker interferes to disturb the thread of the debate, and to throw in altogether different ideas. Hence, the first feeling of men, their natural instinct, is altogether in favour of this manner of debating between two parties who alternately speak *pro* and *con*.

In the British parliament, both these methods are employed: the one when the assembly is said to meet as the *house*—the other when it meets in *committee*. When the house is assembled, the rule of speaking only once is strictly observed. In committee, it is the custom to allow of replies; and the discussion

is frequently confined to a small number of individuals who have paid particular attention to the question. At all times this is rather an indulgence than a rule; and thus it ought to be, for there are some obstinate speakers who will never have done; and replies have this inconvenience, that they often lead to personalities, which might make the debate degenerate into bitter and fruitless contentions.

In allowing the liberty of replies, you expose the debates to a duration incompatible with the transaction of business. This is the strongest objection against them. But first, the cases in which prompt decisions are necessary do not often arise in a legislative assembly; and in such cases it is always master of its own rules, and always at liberty to act according to circumstances.

Secondly, Can any time be considered as lost, which has been occupied in *bona fide* discussion, how long soever that discussion may have been? Is rapidity the principal object? Ought we to avoid a few moments of weariness, at the risk of many hours of repentance? Excess of examination need not be feared: bad laws are rather the results of inattention and precipitation. The general rule ought to be, to reject nothing which may enlighten the assembly: but how can it be decided beforehand, that an individual who wishes to speak has nothing useful to say?

In conclusion, it is doubtful whether the admission of replies would prolong discussions. When a question is quite clear—when the two parties find that their opposition is irremediable, the debate has reached its natural conclusion, and every one will be desirous of seeing it finished. Now, the liberty of reply has a direct tendency to lead the discussion to this point. Two antagonists, engaged upon a question for which they have made preparation, will reply to each other with more strictness—they will go at once to the point without losing time in set phrases, exordiums, and apologies, as is done by each new orator, that he may give to his arguments the polish and ornaments of speech.

After all, the free method does not necessarily deprive any individual of the opportunity of speaking: it only retards the moment at which he obtains it. It is a simple transposition of time, which takes nothing from equality.

After this exposition of the reasons for and against these methods, every assembly must decide, according to circumstances, whether it will be proper to admit the one or the other of these forms of debate.

But even when replies are not permitted, an exception should always be made in favour of the author of the motion. *He who opens the debate, should be allowed to speak last in reply.* He may naturally be presumed to be best acquainted with the strong and weak points of his cause, and if he were not allowed the right of reply, objections to which he only could reply, *might* impose upon the assembly. In the British parliament, this last reply is frequently that which attracts the most attention. In this the speaker concentrates all his strength, and brings it to bear upon the essential points which ought to determine the judgment. "*Videndum præcipue utrique parti ubi sit rei summa. Nam fere accidit, ut in causis multa dicantur, de paucis judicetur.*" *

§ 3. *Of three Debates upon every proposed law.*†

The general rule in the English parliament is, that every bill shall be debated three times upon different days, and these days oftentimes distant from each other. These are called *the three readings* of the bill. The bill may be thrown out on the first, the second, or the third reading; but it is not passed till it has been read three times.

This is not all. Between the second and third reading, the bill is discussed in a *committee of the whole House.*

This general committee (which is spoken of elsewhere) admits of forms of discussion more free than those allowed in the regular debates. A chairman is chosen for the occasion;—the details of the measure are discussed;—the same persons are permitted to speak several times upon the same subject; and the discussion is thus generally carried on by the individuals who possess the greatest knowledge of the particular question.

With regard to the *three readings.* The first is almost confined to the introduction of the bill, and general observations upon it;—the second is a debate upon its principles;—the third regards it as a whole, the terms of which have been considered and settled.

The advantages of these reiterated debates are—1. Maturity in the deliberations, arising from the opportunities given to a great number of persons, of speaking upon different days, after they have profited by the information which discussion has elicited; 2. Opportunity afforded to the public, to make itself heard—and to the members, to consult enlightened persons out of doors; 3. Prevention of the effects of eloquence, by which an orator might obtain votes upon a sudden impulse; 4. Protection to the minority of the assembly, by securing to it different periods at which to state its opinions; 5. Opportunity for members absent during the first debate, to attend when they perceive that their presence may influence the fate of the bill.

Every one knows by experience, that the

* Quint. V. 13.

† In this chapter I have attempted to supply a subject omitted by Mr. Bentham, who makes frequent allusions to these reiterated debates, but who has not treated of them expressly.—*Dumont.*

strongest reasons alleged by two parties cannot be estimated at their true value the first time of hearing: they make either too much or too little impression; — too much, if they are developed with all the seduction of authority and eloquence — too little, if they are opposed by violent passions, interests, or prejudices. After an interval of a few days, the mind becomes calm — public opinion has time to act — the effect of mere eloquence ceases to operate — reason resumes its sway. Very different views are often brought to the second debate, from those which were successful on the first, — and the two parties approach each other with arguments matured by reflection and communication with the public.

Parties appear to have a necessary existence. If a single debate decide the adoption of a law, each party has an extreme interest in employing all its means to secure the victory of the day — and great heat and animosity are produced by the debate. But when it is known that a first victory is not sufficient — that the struggle must be renewed a second and a third time with the same antagonists, — strength is reserved — it is tempered, that it may not injure the cause in which it is employed; no one dares to take an unlawful advantage, because this would be to supply arms to his adversaries; — and the party in the minority, which gradually sees that its ultimate defeat approaches, gives way to it with the more moderation, inasmuch as it has been allowed every opportunity of preventing it.

In the British parliament, independently of the *three readings* which are necessary, there are many other occasions in which it is possible to renew the debate during the *progress of a bill* — the technical term which comprises all the stages through which it must pass before its completion. It must, as I have already said, be *committed* — and it may be *recommitted*. It must be engrossed, that is, written on parchment, to become the authentic text. It ought at last to be transmitted to the House of Lords, and it may be sent back again to the Commons. Each of these stages are passed upon motion by a member, and each motion may become the occasion of a new debate. The *opposition* very rarely makes use of these different means for retarding the progress of a bill; but they are held in reserve for extraordinary occasions, when delay may produce important results.

It may be objected, that this plan occasions great delays, and that circumstances may imperiously require that a law should be passed with rapidity. To this it may be replied, that in cases of necessity the Houses of Parliament can suspend their usual orders, and that a bill may be made to pass through all its stages in both houses in one day. An example of this kind occurred, if I am not mistaken, during the mutiny at the Nore in 1797; but such extreme measures arise from urgent necessity, which overcomes all opposition.

Those who consider the slowness of these forms as objectionable, do not perceive that their objection is directed against reflection — against that information which is often the fruit of time and study. There may be repetitions; but a reasonable conviction is not attained at once. The best argument requires to be presented at different times, and under many aspects. It is by these means that it becomes adapted to different minds, and is deposited in the memory. Those men who are persuaded by a word, are lost as easily as they are gained. Allow of obstinacy in debate, and there will result from it perseverance in conduct. In France, the terrible *decrees of urgency*, the *decrees for closing the discussion*, may well be remembered with dread: they were formed for the subjugation of the minority — for the purpose of stifling arguments which were dreaded. The more susceptible a people are of excitement and of being led astray, so much the more ought they to place themselves under the protection of forms which impose the necessity of reflection, and prevent surprises.

A more direct answer may be given to this objection on the ground of delay: — Three debates necessarily require intervals, but they do not tend to render the discussion longer upon the whole — they have rather a contrary effect. Indeed, these three debates have different objects, and divide the deliberations in the most suitable manner. In the first, the question is, Shall the subject-matter be considered at all? If its consideration be refused, there is a great saving of time, because no one has been engaged in the consideration of the details. At the second reading, the question is, Shall the principle of the bill introduced be adopted? If its principle be admitted, it is then taken into consideration in committee, and each clause is considered by itself, and amendments, if necessary, proposed in it: when the whole has been thus considered, the bill is reported to the house.

At the time appointed, the project of the law, as thus prepared, undergoes a third debate: the whole of its parts and bearings being thoroughly understood, all are prepared to consider it in its principles and details; whilst those who wish again to propose their amendments can do so, if they hope to obtain the concurrence of the majority.

§ 4. *Of the exclusion of Written Discourses.*

The rule for the exclusion of written discourses is strictly observed in the British

parliament. It ought to be so in all deliberative assemblies.*

"The principal inconvenience of written discourses consists in their want of connexion — they have no relation to one another.

"It is easily perceived that a political assembly is not a society of academicians; that the principal advantage of a national senate, and of public discussion, arises from that activity of mind, from that energy of feeling, from that abundance of resources, which results from a large assembly of enlightened men who animate and excite each other, who attack without sparing each other, and who, feeling themselves pressed by all the forces of their antagonists, display in their defence powers which were before unknown to themselves.

"Attention is like the mirror, which concentrates the rays of the sun into one focus, and produces increase both of heat and light; but attention cannot be sustained except by connected discourse, and the kind of dramatic interest which results from it. When attention is excited, nothing passes without examination: every truth tells — every error provokes refutation; a fortunate word, a happy expression, is more effective than a long speech; — and as these weapons cannot be wielded in debate except by the cleverest men, the assembly is spared from ennui, and saves its time. There is nothing useful in the plan of reading, except it be to procure for mediocrity the consolations of self-love, at the expense of the public good.

"Will it be said, that these prepared discourses will commonly have greater maturity, greater depth? — that the assembly by this means is less exposed to hear dangerous and ill-considered opinions? The effect is precisely opposite. It requires longer preparation and deeper meditation to be able to speak extempore than to write at leisure. To have completely mastered his subject — to have studied it under all its aspects — to have foreseen all objections — to be ready to answer every one: such are the conditions necessary for a public speaker. But what ordinary man is not able to write upon a given subject any number of pages? One person employs writing for the purpose of facilitating meditation, to relieve his memory, to prevent the fatigue of retaining a series of ideas; another writes, that he may dismiss from his mind what he has committed to paper. It may therefore easily happen, that a man does not understand the subject upon which he has written; but he must always understand his subject, if he will speak well upon it.

"If all those who have exhibited the talent of speaking in the National Assembly, had been asked why they were reduced to the reading of memoirs upon difficult and complicated subjects, they would have accused the shortness of the time, the premature questions, the number and variety of the subjects: but they would thus have confirmed the opinion, that the plan of written discourses is bad in itself. It will never form powerful minds in a political assembly: it favours idleness of thought, and, like the habit of being carried, produces torpor and indolence.

"In England, as elsewhere, the distinguished talent for public speaking is concentered among a small number of individuals; but the plan of reading is not tolerated there, which multiplies speeches without multiplying ideas. Does it appear that there is any want of arguments in their discussion? — is there less vigour among their political combatants? As soon as the defender of a motion ceases to speak, does not the opposite party furnish an orator, who seeks, by his opposite arguments, to efface the impression which the first has made."

Those who do not possess the talent of public speaking, may communicate facts and arguments to the habitual speakers. This is the best method of making them useful. These communications — these contributions of ideas, continually take place in the British parliament.†

§ 5. *Other rules relative to Debate.*

The rules we are about to exhibit are not of the same importance as the preceding, but they all tend to prevent inconveniences, and to produce a better debate. The former were dictated by necessity, these by prudence.

1. *Address the president, and not the assembly in general.*

This custom, constantly followed in the House of Commons, is well adapted to a numerous assembly, it gives those who speak a fixed point of direction, and a common centre for all the speeches.

It is also natural that each should address himself to the individual who is officially to judge if he wander from the question, or if he fall into any irregularity prohibited by the rules of the assembly.

A speech addressed to the president of the assembly will be more grave and temperate,

* Bentham does not appear to have discussed the above topic. The paragraphs which follow have been extracted from "La Courrier de Provence, No. 65." — *Dumont.*

† They occurred even in the National Assembly. I have often seen M. de Mirabeau, in going to the tribune, and even in the tribune itself, receive notes, which he has glanced at without interrupting his speech, and which he has sometimes interwoven with the greatest art into the train of his discourse. A wit once compared him to those mountebanks, who cut a ribbon in pieces, chew it for a moment, and then pull the ribbon in one length out of their mouth again. — *Dumont.*

than if it were addressed to the whole assembly. An excited individual addressing himself to an impartial magistrate, to a respected president, will feel the necessity of measuring his expressions, and repressing the movements of his indignation and wrath.

If the members speak directly to each other, the discussion will more easily degenerate into personalities.

There is no custom more useful in a political assembly, than that of treating the president with deference and respect; and there is nothing more likely to form this habit, than the considering him as the centre of the deliberations — as the assembly personified.

2. *Avoid designating the members of the assembly by their proper names.*

This rule, strictly followed in the House of Commons, renders it necessary to recur to circumlocutions in designating a member: "*The Honourable Member on my right*," or "*on my left*"—"*the Gentleman in the blue ribbon*" —"*the Noble Lord*"—"*my Learned Friend*," &c. Most of these expressions are polite, without being insipid. The proper names would often be accompanied with a catalogue of complimentary epithets, of which we may see many examples in the speeches of Cicero pronounced in the Roman Senate: but the real inconvenience is, that the mention of the name in debate is a stronger appeal to self-love than every other designation. It is less offensive to say, "the honourable member who spoke last has fallen into a gross mistake," than to call him by his name: it is as though an abstraction were made of the individual, that he might be considered only in his political character. The observation of this rule is troublesome; and when the debaters are warm, it requires an effort to submit to it;—but this very circumstance proves that it is necessary.

3. *Never impute bad motives.*

This also is an absolute rule in British debate. You are at liberty to impute ignorance to a previous speaker — to tell him of his mistakes, his false representations of facts — but not to say one word inculpating his motives. Direct your energy against the mischievous effects of his opinions, or the measures he supports; show that they are fatal — that they tend to establish tyranny or anarchy; but never suppose that he foresaw or designed these consequences.

This rule is strictly founded on justice; for if it be difficult always to know our own true and secret motives, there is much more temerity in pretending to develope those of others; — and from our own experience we ought to know how easy it is to be deceived in this respect. The reserve which this rule imposes, is useful to all. It is favourable to the freedom of opinion. In political debate as in war, you ought not to employ any means which you would wish should not be employed against you.

But this maxim is especially conformable with prudence. Is your antagonist in error? —he may receive the truth you skilfully present to him: but if you impugn his motives, you offend him — you provoke him — you do not leave him the quiet necessary for listening to you with attention: he becomes opposed to you: the fire communicates from one to another — his friends make common cause with him, and oftentimes resentments, which are prolonged beyond the debates, carry into political opposition all the asperity of personal quarrels. It is not enough to exclude personalities: it also is proper to proscribe all violent and bitter expressions; it is proper to proscribe them as signs of awkwardness, still more than as traits of passion.

All who have watched political assemblies know that improper expressions are the sources of the most tumultuous incidents and of the most obstinate wanderings.*

4. *Never mention the wishes of the sovereign or the executive power.*

This wish in itself proves nothing in regard to the fitness or unfitness of the measure: it can have no good effect, and can only be productive of evil.

The admission of this instrument would be incompatible with the liberty of the assembly, not only upon the particular occasion but upon every other; for if it may be alleged at one time, it will be alleged at all times; and if the least value be granted to a consideration of this nature, the power of the assembly is reduced to nothing: there is substituted for its will, the will of a superior.

If this wish, when announced by one party, should be disputed or condemned by another party, it would follow that the head of the executive power would become the personal object of the debates — that its dignity would be compromised; and there would result a most fatal species of discord — that which leads on to civil war.

This rule has been long established and strictly followed in the parliamentary debates. The king's speech at the opening of the ses-

* Mr. Fox, the most distinguished orator of England, who attacked his adversaries with so close a logic, carried to the highest pitch the art of avoiding everything which might irritate them. In his most animated moments, when he was as it were borne onward by the torrent of his ideas, always master of himself, he was never wanting in the most scrupulous regard to politeness. It is true, that this happy quality was in him less a secret of the art of oratory, than the effects of the benevolence of his character — modest amidst its superiority, and generous in its strength. Still, however, no man ever expressed himself more courageously, or less ceremoniously. "*Les mots allaient*," as says Montaigne, "*ou allait la pensée*,"

sion only contains general recommendations; and besides this, it is only considered as an act of the minister. It is therefore freely discussed without mention of the king, and the opposition attack it as they do any other ministerial measure.

5. *Never quote any justificatory piece, or means of proof, which has not been presented to the assembly in consequence of a motion made to that effect.*

Omnis demonstratio ex præcognitis et præconcessis.

This rule is founded upon two manifest reasons: —

1. To secure the authenticity of the matter which is taken as a foundation for the decision.

2. To give every member an opportunity of being acquainted with it, and informed of the use which it is desired to make of it.

In consequence of neglecting this rule, the highest bodies in the state in France have sometimes fallen into errors with which the lowest official persons cannot be reproached in England. The parliament of Paris, in its famous remonstrances of the 16th and 24th July 1787, enumerated Charles V. and Henry IV. among the kings who had assembled the States-General, which is not true either of the one or the other.*

How often has the National Assembly passed decrees upon mere hearsay — upon facts said to be of public notoriety! — without thinking that there is nothing more deceitful than popular rumour, and that the more widely a fact was known, so much the more easily might proof be collected of it.

The legislative assembly transmitted articles of accusation against M. de Lessart to the high national court, which contained only vague and declamatory imputations, without stating a single fact, and without having heard the accused.†

6. *Do not permit any motion which has been rejected, to be presented afresh during the same session, or before an interval [of three months.]*

This rule has for its object the repression of the obstinacy of parties, which would never leave off repeating questions which had been already decided against them, either from a hope of thereby keeping up the zeal of their partisans, or from a desire to embarrass the operations of the assembly.

This rule can only be strictly applied to motions which are identical. A party will never allow itself to be restricted by the prohibition to reproduce its motion. If it see any chance of success, it will not fail to present it again under a new form.

It is, however, always well to insert this article in the regulations. It will follow from it in ordinary cases, that a motion once rejected will not reappear in the same session.

A rule which should permit the definitive rejection of motions without return, would be the greatest possible attack upon liberty: it would be to seek to enchain one's self or one's successors.

§ 6. *Of the Election of Debaters.*

I proceed to point out a mode of reducing the number of orators, in an assembly too numerous to allow the right of discussion to all.

It would, however, only be applicable to democratic constitutions; for with good regulations, six hundred persons at least might exercise the right of speaking without any occasion to limit it to a certain number.

The most simple method would be to elect in the first instance, twenty-four orators by name; 2dly, To choose one hundred other persons by lot, in order to give a chance to all parties; 3dly, To permit each of these to waive his right in favour of any other member of the assembly at pleasure. Those who did not possess the talent or inclination to speak, would then voluntarily surrender their places to such members of their own party as seemed best fitted to fill them. But it would be proper to reserve for all the members the right of making a motion — that is to say, a principal motion — and of explaining it.

---

* This fact is drawn from L'Histoire du Gouvernement François, p. 147.

† Every nation has its weakness and its endemic imperfections; and the greater the empire they have obtained, the greater the importance of knowing and guarding against them. Of all the faults with which French writers can be accused, inexactitude is the most marked — the most incontestible. If the English nation has any decided advantage over its rival, it is in the quality opposed to this defect that its cause should be sought for.

An historical work without authorities would be received in England very nearly as a plea without proofs, or as a romance. But in France, a great number of historians have considered it unnecessary to give references to original authorities: the condition they impose upon their readers is to believe them on their word. But if the author had the original documents before him, why did he not cite them? Is it more difficult to make a reference than an extract? What reliance can be placed upon his judgment, if he have not felt that the confidence he demanded depends upon this exactitude? And if it arise either from negligence or trifling, that he has refused the labour necessary for furnishing his proofs, may it not with much stronger reasoning be presumed that he was incapable of taking the pains necessary for acquiring them?

There is a kind of maxim proverbial in France, that it is proper to regard the meaning without weighing the letters — without quarreling about the words; — as if the meaning did not depend upon the words — as if correct ideas were not produced by correct words. This pretext is the resource of feeble and careless heads, which would be thought strong; for there is no defect which has not attempted to employ itself as a mask.

CHAPTER XII.

OF AMENDMENTS.

AT first sight, it would appear scarcely possible to class amendments, since they may embrace every modification which the human mind can conceive with respect to a given motion. Upon calling analysis, however, to our assistance, we shall discover that this difficulty vanishes.

All amendments are necessarily relative to *the choice of terms*, or to *the mode of their connexion*.

Amendments which relate to terms, can only have for their object one or other of these three objects — to suppress, to add, or to substitute. This last operation is effected by the union of the two first.

Amendments with reference to the connexion of ideas, can only have for their object — their *division*, their *union*, or their *transposition*.

Does the original proposition appear to me too complicated? I demand that it be divided, with the intention of allowing the assembly the power of rejecting one part, without rejecting the other.

Does it appear proper that two propositions which are separated in the original project, should be considered together, or one following the other? I demand their union.

Amendments which consist in transposing a certain word or phrase may have the effect of entirely changing the project: the word *only*, for example, placed in different situations, will produce a meaning totally different.

Amendments are thus reduced to six kinds, and are capable of receiving clear and precise denominations: —

Amendment { Suppressive. Additive. Substitutive.

Amendment { Divisive. Unitive. Transpositive.

These technical terms appear necessary to prevent the confounding of ideas which only differ from each other by very slight shades. Things which are not classified, and which have no proper names, are always ill understood, and cannot be designated but by periphrases which are often obscure.

A proper name is a great assistance to the understanding, to the memory, and to the communication of ideas. The greatest difficulty which can be alleged against new words is, that they are difficult to be understood; but those derived from more familiar terms are perfectly intelligible.

It frequently happens, that many amendments are offered upon one motion, and even amendments which refer to a previous amendment: this is what is called a *sub-amendment*. In what order ought they to be discussed? It is very difficult to give positive rules in this respect: each party will support the importance of his own, and seek to obtain priority. If a debate were always necessary to decide the matter, the principal question would be lost sight of, and the attention of the assembly exhausted upon these accessories.

These contests may be rendered more rare and short, by laying down as a general principle, that amendments upon the *connexion* shall always be taken into consideration first. What is their object? To place the objects to be discussed in the most suitable order: but this order, once formed, is that which most tends to produce a good discussion. Among this class of amendments, the divisive ought to have the priority. Complex questions are the occasion of the most obscure and obstinate debates.

Among amendments as to the *choice of terms*, it might also be laid down as a general principle, that *suppressive* amendments ought to have the priority over the two others of the same kind. The suppression of a single term may remove the strongest objections, and that which is omitted is no longer the subject of debate: on the other hand, additive or substitutive amendments may be productive of sub-amendments of the same species.

The value of these observations will only be fully apprehended by those who have had experience in political assemblies. They will be aware how much confusion is produced by multiplied amendments, and how happy it would be, if without absolute rules some thread could be found which would lead out of the labyrinth.

There remain many more difficulties upon this subject. When there are many additive amendments in concurrence, in what order should they be submitted to the vote? Ought they to be presented singly, or all at once? If they are presented singly, by deciding according to priority you do not give the others an equal chance. It is the same in elections. If you have to choose among many candidates, you do not treat them with equality if you put them to the vote one after another. He who is presented first, will in general have a great advantage; and if he be elected, the others would be rejected without having any chance of success. It is proper, therefore, to vote for rival amendments after the elective manner. I see no other inconvenience than the length of the process. It would be proper always to have recourse to this in cases of great importance. In ordinary cases, it may be allowed to the president to put amendments to the vote in the order

which appears to him most suitable, it being understood, that if objection be made, it belongs to the assembly to decide.

It is scarcely necessary to say that amendments are only trials which ought to admit of every possible variation. If the amendment pass, it does not follow that the clause amended shall be adopted. The motion, thus modified, becomes the object of debate, and may be rejected. That which has been suppressed, may be re-established: that which has been added, may be struck out. Words may be placed and displaced, as in the corrections of style, without deciding upon the value of the composition, which after this labour may be condemned or destroyed.

One rule which ought to be absolute with respect to amendments, is — not to admit any which are insidious.

I call those pretended amendments insidious, which, instead of improving the motion, represent it as ridiculous or absurd, and which cannot be adopted without making the motion fall by means of the amendment itself.

Ridicule is useful for the overthrow of an absurdity which does not deserve to be seriously attacked; but an epigram in the shape of an amendment is a piece of wit which is unbecoming the gravity and the design of a political assembly. To propose an amendment, is to declare that one seeks to improve the motion, that it may become worthy of approbation: to propose an amendment which renders the motion ridiculous, is a species of fraud and insult, resembling that particular kind of impertinence which in society is called *jeering*.

Besides; these insidious amendments are altogether useless. They cannot pass unless the majority of the assembly be already disposed to reject the motion itself. It is therefore to go round about, in order to reach the end which may be attained by direct means. You only render necessary two operations instead of one. You begin by receiving the amendment which renders the motion absurd, and then reject the motion thus amended.

Let us apply these observations to the celebrated vote of the House of Commons in 1782 — a vote which served as the foundation of a kind of revolution in the government: —

"It is declared, that the influence of the crown has increased, is increasing, and that it ought to be diminished."

Let us suppose that one of the opponents of the motion had proposed that it be adopted, upon the insertion of the word *necessary* before influence.

Here would be an example of the amendment insidious; since the insertion of this word would have rendered the motion contradictory, and even criminal; and the amendment having been admitted, the motion ought to be rejected.

Another example: — A motion having been made for the production of all letters written by the Lords of the Admiralty to an officer of marines, — it was proposed to add as an amendment, the words "which letters may contain orders, or relate to orders not executed, and still subsisting." The amendment having been adopted, the whole motion was rejected without a division.

This mode of procedure united both the inconveniences I have mentioned: insult and derision were its object — cunning and tergiversation were its means. It was entirely opposed to the maxim — *suaviter in modo, fortiter in re.*

CHAPTER XIII.

OF DILATORY MOTIONS, OR MOTIONS OF ADJOURNMENT.

A motion made, and its proposer heard, it is lawful for any member, from this moment to the conclusion of the debate, provided he does not interrupt any speech, to propose a dilatory motion; and this shall take precedence of the previous motion.

There are three kinds of dilatory motions: —

Indefinite adjournment.... *(sine die.)*
Fixed adjournment ..... *(in diem.)*
Relative adjournment ..... *(post quam.)*

This latter motion consists in proposing to adjourn till after a future event: for example, till after the discussion of another motion, or of some bill already upon the order-book — or till after the presentation of a report, which ought to be made by a committee, &c. — or a communication from the king, or expected petitions.

All these motions ought to be permitted, in order to secure to the assembly the exercise of its will; which would not be completely free, if any one of these modifications were excluded.

The relative adjournment, or *post quam*, is necessary as a preservative against the danger of coming to an unsuitable decision in the absence of the necessary documents.

Fixed adjournment, or *in diem*, may have the same object, the procuring of new documents upon a question which does not appear sufficiently clear; or it may be for the purpose of arresting a discussion which assumes too lively and passionate a character.

Precipitation may arise from two causes: from ignorance, when a judgment is formed without the collection of all the information required — from passion, when there is not the necessary calm for considering the question in all its aspects.

What may happen to an individual, may

happen to an assembly. The individual may feel, that in the actual conjuncture he is not so sufficiently master of his passion, as to form a prudent determination, but he may be sufficiently so, not to form any—

"Quos ego. Sed motos præstat componere fluctus."
Æn. I. 139.

"I would beat you," said the philosopher to his slave, "if I were not angry."

This faculty, of doubting and suspending our operations, is one of the noblest attributes of man.

These two species of adjournment decide nothing as to the merit of the motion: but to demand an indefinite adjournment, is to cut short the debate by rejecting the motion itself. Ordinarily, the partisans of the original motion will be opposed to this adjournment, and they will employ all the arguments which they can advance in its favour, in opposition to the adjournment. In this case the debate will be less direct, but not shorter. But it may happen that they may themselves favour the indefinite adjournment, if they judge by the complexion of the debate that the chances of success are unfavourable, and that they can attempt their object with more success at a future time.

When an indefinite adjournment is adopted, it is probable that the original motion would have been rejected. The prompt termination of the debate is then an economy of time.

CHAPTER XIV.

OF VOTING.

§ 1. *General Observations.*

THIS subject is both difficult and important. The freedom of an assembly resides in the expression of its will. It is necessary, therefore, so to proceed, that every one may give his vote in conformity with his real wishes, and that in the result we may be sure to have obtained the general wish.

The processes of voting are susceptible of divisions derived from many sources:—

1. Voting upon questions, or voting respecting persons. The first takes place with reference to the adoption or rejection of a motion; the second with reference to the election of a person to an office.

There is no real difference between these two cases. To vote upon an election is to vote upon the question whether a certain individual shall be elected: to vote upon a question, is to vote upon an election whether the project shall be chosen or rejected.

2. A *simple* or a *compound vote*. The simple vote occurs when the question is so reduced that it is only necessary to say *yes* or *no*—such a project shall be adopted, or shall not—such person shall be elected or shall not.

The compound vote occurs, when many operations are to be performed;—when it is necessary to decide among many projects, to choose one person from among many candidates, or to nominate to many places.

With regard to motions, it is proper to reduce the question to the simple form, in which one side may vote by yes, and the other side by no.

With regard to elections, the compound mode is often necessary. When a committee of twenty-four persons is to be chosen from among 1200, there will be 1200 persons eligible for each place, and twenty-four places for each of which it is necessary to choose out of 1200.

3. With reference either to motions or elections, the votes may be given *secretly* or *openly:* the secret mode is called ballot.

4. The mode employed for obtaining a decision, may be either *dependent* or *independent* of human will. Hence a new distinction—election by *choice*—election by *lot*.

5. In conclusion, there is also regular and summary voting. In the regular mode, all the votes are counted, and the exact number on each side known: in the summary mode, the president puts the question, and calls upon the assembly to express its will by sitting down or rising up, or by holding up the hand, &c.; the president judging which party has the majority, and his decision being valid, unless objected to.

§ 2. *Of open and secret Voting.*

In general, it is very desirable that the voting should be open rather than secret.

Publicity is the only means of subjecting the voters to the tribunal of public opinion, and of holding them to their duty by the restraint of honour.*

This supposes that publicity is in accordance with the public welfare.

In general, this supposition is well founded. The opinion formed by the public is always conformable to what appears to be its interest; and in the ordinary course of things it sees its own interest, whatever it may be. It is always opposed to misconduct; it always respects the probity, the fidelity, the firmness of its governors and judges.

Still, however, the opinion of the public may be incorrect, since all the members of this tribunal are men. If there be measures upon which the wisest men are not agreed, how is it possible that the public should agree, who are not all wise? If there be errors in morals and legislation, which have led the noblest minds astray, how can the multitude, over whom prejudices have so great an empire, be secured?

It may therefore be said, that in those cases in which public opinion is erroneous, it is

* See Chap. II. *Of Publicity.*

desirable that the legislators should vote in secret, that they may be withdrawn from unjust censure, and rendered more free in their votes.

This argument is unsound: for upon what is it founded? Upon the presumption that the opinion of a small number is more correct than the united opinions of a large number. This may be true; but a wise and modest man will be always unwilling to attribute to himself this superiority over his fellows — to pretend to make his opinion triumph over the general opinion. He will choose rather to submit his opinion to that which generally prevails in the nation, and especially will he not desire a victory obtained by clandestine votes, of which he knows the danger.

It follows, therefore, that recognizing the fallibility of the public, it is proper to act as though it were infallible; and that we ought never, under pretence of this fallibility, to establish a system which would withdraw the representatives of the public from its influence.

But may it not be apprehended that this publicity will render men too feeble — that is to say, disposed to sacrifice their real opinions to the general opinion? No: this plan tends in the long run to give greater strength and elevation to their characters. Experience will soon disclose the great difference between the opinion which arises out of a particular circumstance, and that which is formed after mature reflection—between the clamour of the multitude, which is dissipated in noise, and the enlightened opinion of the wise, which survives transitory errors. Freedom of opinion conciliates the respect even of those whom it opposes, and mental courage is no less honoured in free states, than military bravery.

It is, therefore, in a correct knowledge of public opinion, that the means must be found for resisting it when it is considered ill founded: the appeal lies to itself — as from Philip misinformed, to Philip correctly informed. It is not always according to public opinion that an enlightened and virtuous man will decide, — but he will presume, in consulting general utility, that public opinion will take the same course; and there is no stronger moral probability in a country where discussion is free.

Such are the principles which may be advanced for the establishment of the general rule with regard to the publicity of voting.

This rule must be subject at all times to widely extended exceptions.

The cases in which publicity would be dangerous, are those in which it exposes the voters to the influence of *seductive* motives more powerful than the tutelary motives which it furnishes.

In judging whether a motive ought to be referred to the class of *seductive* or *tutelary* motives, it is necessary to examine whether, in the case in question, it tend to produce more good or more evil — whether it tend to favour the greatest or the smallest number.

If, for example, a nobleman be called to decide between his own personal interest and the interest of the body of the nobility, — the motive, whatever it may be, which leads him to prefer this interest to his own, deserves to be called *tutelary*. If this same nobleman be called to decide between the interest of the body of the nobility, and that of the total mass of the citizens, — this same motive loses its tutelary quality, and can only be considered as a seductive motive.

Hence *l'esprit de corps*, a *social* principle, when it leads to the sacrifice of the interest of the individual to that of the particular society, becomes *anti-social* when it leads to the sacrifice of the great interests of the public.

The same observation is applicable to friendship. If this motive lead me to serve my friend at the expense of my own interest, it is social and tutelary: if it lead me to serve him at the expense of the general good, the same motive becomes anti-social and seductive.

From these considerations, it is proper to add to the general rule respecting publicity, a limiting clause: —

Votes ought to be given secretly in all cases in which there is more to fear from the influence of particular wills, than to hope from the influence of public opinion.

What are these cases? To answer this question, it is necessary to distinguish two species of interest: the one *factitious* — the other *natural*.

Interest is purely factitious when the voter has nothing to gain or to lose in consequence of his vote, except when his vote is known.

Interest is natural when the voter may lose or gain in consequence of his vote, even should it remain unknown.

For example, the interest which results from the contract whereby I engage to sell my vote to a stranger, is a factitious interest.

Secret voting destroys the influence of factitious interest: it has no effect upon the influence of natural interest.

Under the régime of secresy, the buyer could have no sufficient security that the contract would be faithfully executed by the seller: an individual may be sufficiently dishonest to commit a fraud, but not to commit treason: the lesser crime is always more probable than the greater.

The system of secresy has therefore a useful tendency in those circumstances in which publicity exposes the voter to the influence of a particular interest opposed to the public interest.

Secresy is therefore in general suitable in elections. Are the votes given openly? — no

one can tell to what extent friendship, hope, or fear, may take away the freedom of voting.

It would be a great evil, if in elections, especially popular elections, the effect of secresy were to destroy all influence. This idea of absolute independence in the voters is absurd. Those whose situation does not permit them to acquire political knowledge, have need of guidance from more enlightened persons; but happily the secret mode of election does not diminish the influence of mind on mind: all other things being equal, the most deserving individual in elective assemblies will have the ascendency over the more obscure member;—the man distinguished by his services will have more votes than he who does not rise above the common level. The opulent proprietor, the employment of whose fortune presents a spectacle to the observation of the multitude, will be more readily taken as a model for imitation, than the individual who moves in a narrower circle. This preponderance of the aristocracy is as natural as it is just and necessary. The advantages of wealth and rank suffice, in case of equilibrium in other respects, to turn the balance: but if the one of the candidates had exposed himself to public contempt, whilst the other, rising from obscurity, had acquired the general favour, the illusion would be broken; — and if the votes were free, merit would be preferred to fortune.

It is proper to observe, that the secret mode does not prevent those who desire it, from making known their sentiments. A constrained and universal secresy in elections would be a bad measure: this servile silence would be in contradiction to freedom of action. Each candidate ought to have his friends — his defenders — to cause his claims to be duly estimated by the assembly, to dissipate false imputations — in a word, to enlighten the decision of his judges. Since to proceed to an election is to proceed to try the candidates with the intention of bestowing a reward, — to exclude previous *vivâ voce* discussion, is to decide the cause of the candidates and that of the public, without allowing the interested parties an opportunity of being heard.

It is true that these public debates — these manifestations of party — may sometimes, in popular elections, produce a tumultuous ferment; but this is a small evil, compared with that of restraining the expression of the public feeling. It is by this freedom that the people are interested in persons and things, and that the firmest bonds are formed between the electors and the elected. Even in England, where these periods rarely return, the fear of this species of popular assize exercises a marked influence over those who devote themselves to the career of politics.

With this mixture of publicity, secret voting appears to me, then, most suitable for elections; that is to say, the most suited to prevent venality, and to secure the independence of the electors. In political matters, I do not see any other case in which it can be recommended as a general rule. But it is proper to observe here, that a nation may find itself in particular circumstances, which will demand the same system upon other points. It may be, for example, that at the period when secret suffrages were introduced at Rome the change was desirable. Cicero thought otherwise.

The adoption, however, of one of these methods, does not exclude the other. There are cases in which it is advantageous to combine them, by making them follow upon the same question. The result of these two operations, whether they coincide or whether they differ, would always furnish very instructive indications.

I find a very singular example in the latter days of Poland, when she made a last and generous effort to withdraw herself from the dominant influence of Russia.

The permanent Council, the depositary of the executive power, exercised the supreme power during the interval of the Diets: this Council, intimidated or corrupted, was only the instrument of the will of Russia. It was proposed to raise an army to cause the territory to be respected, — it was proposed to place this army under the orders of a commission, independent of this Council. On the 16th October 1788, they voted upon this proposition: — publicly collected, the votes showed a majority of 80 against 60 for the negative. The secret vote reduced this majority to 7.*

On the 3d of November, the same proposition was discussed again: — the open vote gave for the independence of the commission 114, against it 148; but the secret vote turned the majority on the other side — for the independence 140, against it 122. Thus, among 262 votes, this change of method had made a difference of 52.†

When secret voting is established, it ought only to be when circumstances render a hidden influence suspected; and even then, it is proper that it should be preceded by open voting. Publicity ought to be the ordinary plan.

Secresy ought only to be admitted as a kind of appeal. To demand a ballot, is to appeal from the apparent to the real wish of the assembly.

To take the opposite direction — that is to say, to proceed from secret voting to open voting — would be wrong. The natural order is to pass from the false, or what is suspected

* Courrier de l'Europe, 22d Nov. 1788.
† Gazette de Leide, 5th December 1788.

to be false, to the true. The real wish once ascertained, what good purpose would be served by taking another vote, which would not be the real vote if it differed from the former?

That these two methods may have their highest effect, they ought to be carried to the highest possible pitch. In secret voting, the secresy cannot be too profound: in public voting, the publicity can never be too great. The most detrimental arrangement would be that of demi-publicity — as if the votes should be known to the assembly, and should remain unknown to the public. Individuals would thus be exposed, in all their votes, to every seductive influence, and would be withdrawn from the principal tutelary influences. This is the system which it would be proper to establish, if we would secure punishment to probity, and reward to prevarication.

In governments in which there are public assemblies, acting in conjunction with a powerful monarch whose influence is feared, it has been thought that the secret mode ought to be the ordinary plan, that the members might be withdrawn from the factitious interest which the monarch might create by his threats or his rewards.

If the monarch can act upon the assembly by means of force, imprisonments, or depositions,—security does not exist—liberty is but a name. The intimidated members would find in secret voting an asylum against public opinion.

In relation to the modes of seduction, those which are public may be arrested by laws excluding from the assembly those individuals who hold certain employments at the nomination of the sovereign.

With regard to clandestine favours, or what may be called corruption, — the danger can never be equal, in a numerous assembly, to the grand antiseptic effect of publicity. The number of persons who could be reduced to dependence by such means will never be large: the majority will be restrained by the dread of shame; a still larger number by the fear of being removed in an assembly liable to change.

Should a sovereign grant perpetual favours,— he would most frequently purchase ingratitude. Should he grant his favours periodically, — these secret negotiations would be too disgraceful and perilous to be frequent. Does one kind of honour enjoin the observation of a clandestine bargain? — another kind of honour directs the breach of it, at least in the case when it cannot be observed without openly offending public opinion.

§ 3. *Of summary and distinct Voting.*

Every numerous political assembly which has many operations to perform, has soon been led, by the necessity of economizing time, to ascertain its votes in a summary manner — contenting itself with knowing them by approximation in cases in which the result is manifest, or in which it is not of importance to ascertain the respective numbers with precision. This is the case with regard to the greater number of motions relative to current affairs.

It is better to takes the votes by a visible sign, rather than by acclamation, especially if the assembly be numerous: the sense of sight is a more correct judge than that of hearing. The raised hands, or the persons standing up, are always distinct: voices are more easily mistaken. Are the proportions doubtful? — the operation by standing up and sitting down may be repeated or prolonged without inconvenience: prolonged or reiterated exclamations would be equally ridiculous and inconvenient.

Besides, the voice is a deceptive witness: strength of lungs or party feeling may give to a small number an apparent majority, or at least render the result more often doubtful, and distinct voting necessary.

Acclamations ought to be avoided for another reason: they have a contagious quality, which tends to inflame the mind, and to produce quarrels. In matters which excite a lively interest in the parties, they are a sort of *war-cry*.

The plan of rising and sitting down discovers the voters — the plan of acclamation hides them in a crowd: it may be employed for stifling all opposition, for oppressing liberty, and causing falsehood to triumph.

Indeed, to say that anything has passed by acclamation, is to wish to make it be believed that it has passed unanimously; but if this unanimity were real, more would be gained by proving it by distinct voting.

The votes should not be taken successively, but all at once, as far as it is possible.

Reference is here made to those cases in which the votes are taken openly. This mode of taking the votes simultaneously is not only recommended as summary — it is also recommended as tending to weaken the influence of party and authority, at least in those cases in which there has been no pre-concerted arrangement.

Distinct or regular voting is that in which all the votes are taken and counted: — this operation is called *dividing* the assembly.

It may be effected by various methods: by lists, upon which each member inscribes his vote — or by counters — or by a simple change of place on the part of the voters. The choice depends on circumstances, or the nature of the assemblies. Precautions ought to be taken against all possible frauds, either on the part of the voters, lest they should give many votes; or on that of the scrutineers, lest they should falsify the votes.

Each member ought to have the right of demanding it by a simple formula delivered to the president, — *I require the division.** For it is not proper to deprive any member of the right of knowing whether the decision be really conformable to the wish of the assembly, or of that of appealing to public opinion, by making known those who vote for or against a measure.

He who demands a division can only have the one or other of two objects in view. Is the disproportion manifest? — he desires to make known the relative force of the two parties—or he wishes to subject the voters to the law of publicity. In this case, it is a species of appeal to the people against the decision of the majority — or, to speak more strictly, it is a demonstration of the votes.

If this privilege were abused by the frequency of divisions for slightly important objects, it might be remedied by requiring the concurrence of a certain number of individuals in a requisition for distinct voting. But such an abuse is scarcely probable. One individual would not often desire to divide the assembly solely to show that he alone was opposed to all the rest.

The mode used in the House of Commons appears to me liable to several inconveniences.

All business is suspended—the assembly is in a state of confusion, whilst the account is taken of the votes of those who leave the House, and of those who remain. This tumultuous movement of parties, and this interruption, which often last half an hour, has none of the dignity which ought to characterize a legislative assembly.

But this is the least evil. As this derangement is agreeable to no one, a regular division is often foregone in order to prevent the inconvenience; and as it is particularly disagreeable to those who are subjected to temporary expulsion, it is often a subject of controversy to determine upon whom the inconvenience ought to fall. For determining this controversy, a rule has been required; but this rule itself has furnished a crop of the most abstruse metaphysical questions: a volume might be filled with the difficulties which have arisen from this branch of parliamentary jurisprudence. This great assembly has been occupied in discussing points altogether as clear in themselves as the famous question of the schoolmen: *Utrum chimæra bombilans in vacuo posset comedere secundas intentiones.*†

These useless creations of science have for their common effect the restraint of liberty and the concealment of truth. The majority of individuals recoil with affright from the aspect of this labyrinth, and allow themselves implicitly to be led by those who are willing to purchase, at the price of a dry and disgustful study, the privilege of domination. Here, as elsewhere, mystery opens the door to imposture.

To create the world out of nothing was the work of divine power: to create a science out of nothing, and for nothing, has often been the employment of human folly.

From a train of these subtleties, one circumstance still more extraordinary has arisen in English voting: it is, that a member may be forced to vote against his will, and that the legislative assembly should commit an act of falsehood. If the members have, from inattention or any other circumstance, neglected to go out before the door is shut, it is no longer at their option to vote as they wish— they are counted as voting with those who remain in the House, although it be known that their vote is contrary to their known and avowed inclination. — *Hatsell*, Edit. 1818, II. 195.

This mode of voting is an ancient custom, established when printing was not invented, and when the art of writing was not common. In ancient Rome, the Senate voted nearly in the same manner: — "*Manibus pedibusque descendo in sententiam vestram.*"‡

I shall only say one word concerning the French practice — it has been spoken of elsewhere. In the National Assembly, the summary mode takes place by *sitting* and *standing*. The regular mode takes place by *calling over the names*—a method so long, so fatiguing, so

* The form used in the House of Commons is not so simple, nor so conformable to truth. The Speaker declares the majority in favour of the *ayes*—*The ayes have it.* It is necessary, in order to divide the House, that a member of the other party should deny the truth of this report, and say, *The noes have it*, even in the case when he may be found voting alone in opposition to hundreds. I am well aware that this assertion, founded upon ancient usage, is neither understood as giving the lie to the Speaker, nor as expressing the opinion of him who makes it. But wherein consists the propriety or utility of a legislative assembly employing a form which, beside other inconveniences, is everywhere else an indecorum and a lie?

† The general rule which has served as the foundation of all this ridiculous science is, "That those that give their votes for the preservation of the orders of the House, should stay in; and those that give their votes otherwise, to the introducing of any new matter, or any alteration, should go out." — *Journals of the House of Commons*, 10th December 1640; Hatsell, Edit. 1818, II. 187.

‡ The inutility of this form is clearly shown by the circumstance, that when the same individuals in the same number call their assembly a committee of the whole House, this expulsion does not take place. In this case, they have discovered that the two sides of the House are as sufficient to mark the separation of the two parties, as two different rooms. It may perhaps happen in the long run, that they will profit by this discovery.

little favourable to individual independence, that one is almost tempted to believe that the governing party has preserved it as a means of intimidating the weak. It is true, that silence is imposed upon the galleries — that signs of approbation or disapprobation are prohibited: but the sovereign people often mutiny against these prohibitions.

In regular voting, every member ought to be required to give his vote. This obligation is founded upon the nature of his office, as we have seen more in detail in treating *of absence*. He cannot, as appears to me, neglect this duty, except from indifference, pusillanimity, or corruption.

"No," says a wise man, "I shall not vote because I am not sufficiently enlightened upon the question: I am equally afraid of error in declaring myself for or against."

Indecision is a possible state. The mind is as susceptible of this modification as of the two others. To require an affirmative or negative answer from a man who is in doubt, is to substitute constraint for liberty — is to oblige him to tell a lie. The ancient Romans, in penal matters, had seized the distinction of these three states of the mind, and had found formulas for their expression: *absolvo—condemno—non liquet*. The jurisconsults and legislators, who have drawn so many absurd and atrocious laws from Roman jurisprudence, have never thought of adopting this simple arrangement — this religious homage to truth.

I propose, therefore, a new form of voting. There have hitherto been only two lists, or two ballots — the one for the *ayes*, the other for the *noes*; I would establish a third, for the *neuters*.

But it may be asked, why require a man to vote, whilst he is permitted to give a vote which will have effect neither on the one side nor the other?

It is replied, that a *neuter* vote subjects the individual who gives it to the judgment of public opinion. By abstaining from voting, he may escape observation, or he may excuse himself upon divers grounds. But admit a *neuter* vote in a case in which the public interest is manifest, the voter cannot withdraw himself from censure — it will exhibit either his crime or his incapacity in as clear a manner as if he had decidedly taken the wrong side.

In cases which admit of honest doubts, the number of neuter votes would serve to enlighten the assembly, by showing that its deliberations had not yet reached maturity.*

* It would seem that this form, very applicable to *facts*, is less so to the *making of laws*. He who is undecided ought to be for the negative, for he sees no sufficient reason for making the law.

If *doubtful*, *wait*, — is more applicable to matters of legislation than to any others.

Should the neuters be the greater number, what ought to be done? Ought not indecision in this case to have the force of a negative?

In a general committee, the *neuter* vote might be admitted for the purpose of better judging whether the deliberation ought to be continued or adjourned: but it is not necessary; the motion for adjournment supplies its place. All whosare undecided have only to support it, in order to obtain leisure for the acquisition of new information.

CHAPTER XV.

OF COMMITTEES.

§ 1. *Of Special Committees.*

THE more numerous an assembly is, the less is it fitted for certain labours. By dividing itself into committees, it multiplies itself — it resolves itself into many parts, each one of which is better calculated to attain a certain object than the whole body would be.

Each committee may be engaged with a different matter. The labour is distributed — progress is accelerated — a degree of attention may be given to all the details of each new project, of which a large assembly would be incapable. This formation of committees, or *bureaux*, is absolutely necessary for the collection of documents — for engaging in those preparatory researches which require that a great number of persons should be heard — for the verification of accounts, — &c. &c.

It is there frequently that the preparation of a law is completed — a species of labour, for which a large assembly is very ill adapted, and which, if attempted in such an aseembly, would be attended with a considerable loss of time.

Ought these committees to be named for the whole session, or upon each occasion? The correct answer will depend upon the circumstances and the object in view. In matters of finance, of commerce, of political economy, there will be in a permanent committee greater coherency in their proceedings, more experience and special knowledge.

Occasional committees have the advantage of being composed of members who, having made the object in question their particular study, may be considered as better acquainted with it; and who, as they are only charged with a single operation, may give more application to it, that they may better justify the choice of the assembly.

The great difficulty lies in the manner of naming committees. The best mode, perhaps, would be to begin by a free nomination — each member being allowed to name a certain individual as a candidate, and from this list to make nomination according to the relative majority of suffrages.

But whatever may be the merit of these committees, it is not proper that the assembly should so far rely upon them, as to dispense with any one of its opportunities of debate. By so doing, it would be in danger of insensibly transferring the power of the whole body to a small body of individuals, naturally exposed to secret influences.

§ 2. *Of Committees of the whole House.*

In relation to all legislative measures, the two Houses of Parliament are accustomed to resolve themselves into Committees of the whole House, that there measures may be discussed more freely than in the course of a regular debate. The following are the points of difference between these two methods: —

IN THE HOUSE.	IN COMMITTEE.
1. The motion or bill is considered as a whole.	1. The motion or bill is considered article by article.
2. A member can only speak once, except for purposes of explanation.	2. Upon each article each member may speak as often as he pleases.
3. The Speaker is the president in the House.	3. The Committee has its own president, chosen for the occasion.
4. Each motion requires to be seconded.	4. A motion does not require to be seconded.
5. Upon a division, one of the parties remains in the House, the other goes into the lobby.*	5. Upon a division, the two parties go to different sides of the House.
6. The motion may be avoided, by moving the previous question.	6. The previous question is not admissible.

Some of these distinctions appear useful; others are altogether arbitrary: —

1. It is highly proper that bills and motions composed of a series of articles, should undergo two different discussions — first as a whole, and afterwards article by article. This subject has already been considered in Chapter XI. § 3, "*Of three Debates.*"

2. It is highly proper, that upon important subjects there should be two forms of debate: the strict debate, in which each member may speak, but speak only once — and the free debate, in which he has the liberty of replying.

3. With regard to the change of the president, the inconveniences of allowing the president of the assembly to take part in its discussions have been elsewhere pointed out: he is a judge, and as a judge ought not to be exposed to the danger of being infected with party spirit.

* Upon a division, both parties now leave the House. — *Ed.*

CHAPTER XVI.

OF FORMULAS.

FORMULAS are models of what ought to be said upon each occasion by the individual to whom it is prescribed that he should express himself in a certain manner. It can scarcely be determined beforehand, how many formulas an assembly may require: they will be many or few, according to the number of the members, and according to the nature of its powers.

It is proper, for example, that the president always take the votes in the same manner, employing the same expressions — that the members make use of the same terms in presenting their motions, in requiring the exercise of any of their rights, — &c. &c.

Everything unnecessary in such formulas is pernicious. *Clearness* and *brevity*: — such are the essential qualities: to attempt to ornament them at the expense of precision, is to disfigure them.

Formulas not only save words: they have a superior utility — they prevent variations which may have a concealed object — and, above all, they prevent disputes.

In England, the royal sanction is always expressed by the same words: *Le Roi le veut;* and if he reject a bill, the formula of refusal is equally determined: *Le Roi s'avisera.*

Judicial formulas have too often merited the reproach which has been almost everywhere thrown upon them, of being at the same time vague and prolix — of sinning by omission and by excess.

Their prolixity is easily accounted for in all cases in which lawyers have been able to find, in the multiplication of words, a pretext for their services, and the increase of their price. And when the spirit of revenue has been introduced into procedure, and a traffic has been made of words, increase of length has been given to the formulas, that more profit might be derived from them.

It has in certain cases been thought right to proportion the number of words to the importance of the subject. To dismiss a grave matter in two or three words, it has been considered, was not to form a sufficiently high idea of it — not to treat it with a sufficient dignity. This is the error of a little mind. The most sublime thoughts are often expressed by a single word.

THE

BOOK OF FALLACIES:

FROM

UNFINISHED PAPERS

OF

JEREMY BENTHAM.

EDITED BY A FRIEND.

(ORIGINALLY PRINTED IN 1824.)

PREFACE

BY THE

EDITOR OF THE ORIGINAL EDITION.

THE substance of this treatise, drawn up from the most unfinished of all Mr. Bentham's Manuscripts, has already been published in French by M. Dumont; and considering the very extensive diffusion of that tongue, the present work, but for one consideration, might seem almost superfluous.

The original papers contain many applications of the writer's principles to British institutions, and British interests; which, with a view to continental circulation, have been judiciously omitted by M. Dumont.

To the English reader, the matter thus omitted cannot but be highly important and instructive. With the view of enabling him to supply the deficiency, and to obtain separately a treatise of general importance, which in the French work has somewhat unfortunately been appended to one of more limited interest, — namely, that on the mode of conducting business in Legislative Assemblies, — the Editor has made the present attempt.

To have done justice to the original matter, the whole ought to have been re-written: this, the Editor's other pursuits did not allow him leisure to accomplish, and he has been able to do little more than arrange the papers, and strike out what was redundant. In preparing the work for the press, Mr. Bentham has had no share; — for whatever, therefore, may be esteemed defective in the matter, or objectionable in the manner, the Editor is solely responsible. Still, he thought it better that the work should appear, even in its present shape, than not appear at all; and having devoted to it such portion of his time as could be spared from the intervals of a life of labour, he hopes he shall not be without acknowledgment, from those who are competent to appreciate the value of whatsoever comes from the great founder of the Science of Morals and Legislation.

M. Dumont's work contains an examination of the declaration of the Rights of Man, as proclaimed by the French Constituent Assembly. This forms no part of the present volume, to the subject of which, indeed,—Fallacies employed in *debate*, — it is not strictly pertinent. But in fact, the original papers have been mislaid, and they seemed to lose so much of their spirit in a translation from the French, that the contents of the additional chapter would not compensate for the additional bulk and expense of the book.*

---

* The original papers above referred to having been recovered, they will immediately follow the present work in this collection.

CONTENTS.

INTRODUCTION.

SECT. I. A Fallacy, what, ... *page* 379
II. Fallacies, by whom treated of heretofore, ... ib.
III. Relation of Fallacies to vulgar Errors, ... 380
IV. Political Fallacies the subject of this Work, ... ib.
V. Division or Classification of Fallacies, ... 381
VI. Nomenclature of political Fallacies, 382
VII. Contrast between the present Work and Hamilton's *Parliamentary Logic*, ... 383

PART I.

FALLACIES OF AUTHORITY,

The subject of which is Authority in various shapes; and the object, to repress all exercise of the reasoning Faculty, ... 387

CH. I. 1. Analysis of Authority, ... 388
2. Appeal to Authority, in what cases fallacious, ... 391
Appendix, containing examples of the operation of sinister interest, . 395
II. The Wisdom of our Ancestors, or Chinese Argument — (*ad verecundiam*,) 398
III. 1. Fallacy of irrevocable Laws, (*ad superstitionem*,) 401
2. Fallacy of Vows or promissory Oaths — (*ad superstitionem*) . 408
IV. No-precedent Argument — (*ad verecundiam*,) 410
V. 1. Self-assumed Authority—(*ad ignorantiam, ad verecundiam*,) . 411
2. The Self-trumpeter's Fallacy, . . ib.
VI. Laudatory Personalities—(*ad amicitiam*,) 412

PART II.

FALLACIES OF DANGER,

The subject-matter of which is Danger in various shapes; and the object, to repress Discussion altogether, by exciting alarm.

CHAP. I. Vituperative Personalities — (*ad odium*,) 413
1. Imputation of bad design, . . 414
2. Imputation of bad character . 415
3. Imputation of bad motive, . ib.
4. Imputation of inconsistency, 416
5. Imputation of suspicious connexions—(*noscitur ex sociis*,) ib.
6. Imputation founded on identity of denomination — (*noscitur ex cognominibus*,) . . . . ib.
7. Cause of the prevalence of the fallacies belonging to this class, 417
CH. II. 1. Hobgoblin Argument, or, No Innovation! — (*ad metum*,) *page* 418
2. Apprehension of mischief from change — what foundation it has in truth, ... ib.
3. Time the innovator-general, a counter fallacy, ... 419
4. Sinister interests in which this fallacy has its source, ... 420
III. Fallacy of Distrust, or, What's at the bottom? — (*ad metum*,) . . . 421
IV. Official Malefactor's Screen — (*ad metum*)—"Attack us, you attack Government," . . . . . ib.
V. Accusation-scarer's Device—(*ad metum*) — "Infamy must attach somewhere," 429

PART III.

FALLACIES OF DELAY,

The subject-matter of which is Delay in various shapes; and the object, to postpone Discussion, with a view of eluding it.

CH. I. The Quietist, or, "No Complaint," — (*ad quietem*,) 430
II. Fallacy of False consolation — (*ad quietem*,) 431
III. Procrastinator's Argument — (*ad socordiam.*) "Wait a little, this is not the time," 432
IV. Snail's-pace Argument — (*ad socordiam*) — "One thing at a time! Not too fast! Slow and sure!" . 433
V. Fallacy of artful Diversion — (*ad vecundiam*,) 435

PART IV.

FALLACIES OF CONFUSION,

The object of which is, to perplex, when Discussion can no longer be avoided.

CH. I. Question-begging Appellatives—(*ad judicium.*) 436
II. Impostor Terms — (*ad judicium*,) . 438
III. Vague Generalities — (*ad judicium*,) 440
1. Order, ... 441
2. Establishment, ... 442
3. Matchless Constitution, . . ib.
4. Balance of Power, ... 445
5. Glorious Revolution, . . . 447
IV. Allegorical Idols — (*ad imaginationem*,) 448
1. Government; for members of the governing body, . . . ib.
2. The Law; for lawyers, . . ib.
3. The Church; for churchmen, ib.

CH. V. Sweeping Classifications — (*ad judicium,*) . . . . . *page* 450
1. Kings; crimes of Kings, . . ib.
2. Catholics; cruelties of Catholics, ib.
VI. Sham Distinctions — (*ad judicium,*) 451
1. Liberty and Licentiousness of the Press, ... ib.
2. Reform; temperate and intemperate, ... 452
VII. Popular Corruption — (*ad superbiam*) 453
VIII. Observations on the seven preceding Fallacies, ... 455
IX. Anti-rational Fallacies — (*ad verecundiam,*) 457
1. Abuse of the words *Speculative, Theoretical, &c.*, . . 458
2. Utopian, ... 459
3. Good in theory, bad in practice, ... ib.
4. Too good to be practicable, . 460
X. Paradoxical Assertion — (*ad judicium*) 462
1. Dangerousness of the principle of utility, ... 463
2. Uselessness of classification, ib.
3. Mischievousness of simplification, ... 464
4. Disinterestedness a mark of profligacy, ... ib.
5. How to turn this fallacy to account, ... 465
XI. *Non-causa pro causa:* or, Cause and Obstacle confounded — (*ad judicium,*) 466
1. Effect, Good Government: — obstacle represented as a cause, — the influence of the Crown, ... 467
2. Effect, Good Government: — obstacle represented as a cause, — station of the Bishops in the House of Lords, ib.
3. Effect, Useful National learning: — obstacle stated as a cause, — system of education pursued in Church-of-England Universities, . *page* 468
4. Effect, National virtue; — obstacle represented as a cause, — opulence of the clergy, . ib.
CH. XII. Partiality-preacher's Argument — (*ad judicium*) — "From the abuse, argue not against the use," 469
XIII. The End justifies the Means — (*ad judicium,*) . . . . . ib.
XIV. Opposer-general's justification — (*ad invidiam.*) "Not measures, but men," or "Not men, but measures," 470
XV. Rejection instead of Amendment (*ad judicium,*) 471

PART V.

CHAP. I. Characters common to all these Fallacies, ... 474
II. Of the Mischief producible by Fallacies, ... 475
III. Causes of the utterance of these Fallacies, ... ib.
First cause: — Sinister Interest, of the operation of which the party affected by it is conscious, . . ib.
IV. Second cause: — Interest-begotten Prejudice, ... 477
V. Third cause: — Authority-begotten Prejudice, ... 478
VI. Fourth cause: — Self-defence against counter-fallacies, ... 479
VII. Use of these Fallacies to the utterers and acceptors of them, . 480
VIII. Particular demand for Fallacies under the English Constitution, 481
IX. The demand for Political Fallacies: — how created by the state of interests, ... 482
X. Different parts which may be borne in relation to Fallacies, 484
XI. Uses of the preceding Exposure, 486

THE

BOOK OF FALLACIES.

INTRODUCTION.

SECTION I.

A FALLACY, WHAT.

By the name of *fallacy*, it is common to designate any argument employed, or topic suggested, for the purpose, or with a probability, of producing the effect of deception, — of causing some erroneous opinion to be entertained by any person to whose mind such argument may have been presented.

SECTION II.

FALLACIES, BY WHOM TREATED OF HERETOFORE.

The earliest author extant, in whose works any mention is made on the subject of *fallacies*, is Aristotle; by whom, in the course or rather on the occasion of his treatise on logic, not only is this subject started, but a list of the species of argument to which this denomination is applicable, is undertaken to be given. Upon the principle of the exhaustive method at so early a period employed by that astonishing genius, and, in comparison of what it might and ought to have been, so little turned to account since, *two* is the number of parts into which the whole mass is distributed, — fallacies in the diction, fallacies not in the diction: and thirteen (whereof in the diction six, not in the diction seven) is the number of the articles distributed between those two parts.*

As from Aristotle down to Locke, on the subject of the origination of our ideas (deceptious and undeceptious included,) — so from Aristotle down to this present day, on the subject of the forms, of which such ideas or combinations of ideas as are employable in the character of instruments of deception, are susceptible, — all is a blank.

To do something in the way of filling up this blank, is the object of the present work.

In speaking of Aristotle's collection of fallacies, as a stock to which, from his time to the present, no addition has been made, all that is meant is, that whatsoever arguments may have had deception for their object, none besides those brought to view by Aristotle, have been brought to view in that character and under that name: for between the time of Aristotle and the present, treatises of the art of oratory, or popular argumentation, have not been wanting in various languages and in considerable number; nor can any of these be found in which, by him who may wish to put a deceit upon those to whom he has to address himself, instruction in no small quantity may not be obtained.

What in these books of instruction is professed to be taught, comes under this general description: — viz. how, — by means of words aptly employed, to gain your point, — to produce upon those with whom you have to deal — those to whom you have to address yourself, the impression, and, by means of the impression, the disposition most favourable to your purpose, whatsoever that purpose may be.

As to the impression and disposition, the production of which might happen to be desired — whether the impression were correct or deceptious — whether the disposition were, with a view to the individual or community in question, salutary, indifferent, or pernicious — was a question that seemed not in any of these instances to have come across the author's mind. In the view taken by them of the subject, had any such question presented itself, it would have been put aside as foreign to the subject; exactly as, in a treatise on the art of war, a question concerning the justice of the war.

* Σοφισμα, whence our English word *sophism*, is the word employed by Aristotle. The choice of the appellation is singular enough: σοφος is the word that was already in use for designating a wise man. It was the same appellation that was commonly employed for the designation of the seven sages. Σοφιστης, whence our *sophist*, being an impretative of Σοφος, was the word applied, as it were in irony, to designate the tribe of wranglers, whose pretension to the praise of wisdom had no better ground than an abuse of words.

Dionysius of Halicarnassus, Cicero, and Quintilian, Isaac Voss, and, though last and in bulk least, yet not the least interesting, our own Gerard Hamilton (of whom more will be said,) are of this stamp.

Between those earliest and these latest of the writers who have written on this subject and with this view, others in abundance might be inserted; but these are quite enough.

After so many ages past in teaching with equal complacency and indifference the art of true instruction and the art of deception — the art of producing good effects and the art of producing bad effects — the art of the honest man and the art of the knave — of promoting the purposes of the benefactor, and the purposes of the enemy of the human race; — after so many ages during which, with a view to persuasion, disposition, action, no instructions have been endeavoured to be given but in the same strain of imperturbable impartiality, it seemed not too early, in the nineteenth century, to take up the subject on the ground of morality, and to invite common honesty for the first time to mount the bench, and take her seat as judge.

As to Aristotle's fallacies—unless his *petitio principii* and his *fallacia, non causa pro causâ,* be considered as exceptions, — upon examination, so little danger would be found in them, that, had the philosopher left them unexposed to do their worst, the omission need not have hung very heavy upon his conscience: scarce in any instance will be discovered any the least danger of final deception — the utmost inconvenience they seem capable of producing seems confined to a slight sensation of embarrassment. And as to the embarrassment, the difficulty will be, not in pronouncing that the proposition in question is incapable of forming a just ground for the conclusion built upon it, but in finding words for the description of the weakness which is the cause of this incapacity — not in discovering the proposition to be absurd, but in giving an exact description of the form in which the absurdity presents itself.

SECTION III.

RELATION OF FALLACIES TO VULGAR ERRORS.

ERROR—*vulgar error*,* is an appellation given to an opinion which, being considered as false, is considered in itself only, and not with a view to any consequences, of any kind, of which it may be productive.

It is termed *vulgar* with reference to the persons by whom it is supposed to be entertained: and this either in respect of their multitude, simply, or in respect of the lowness of the station occupied by them, or the greater part of them, in the scale of respectability, in the scale of intelligence.

Fallacy is an appellation applied not exclusively to an opinion or to propositions enunciative of supposed opinions, but to discourse in any shape considered as having a tendency, with or without design, to cause any erroneous opinion to be embraced, or even, through the medium of erroneous opinion already entertained, to cause any pernicious course of action to be engaged or persevered in.

Thus, to believe that they who lived in early or old times were, because they lived in those times, wiser or better than those who live in later or modern times, is vulgar error: the employing that vulgar error in the endeavour to cause pernicious practices and institutions to be retained, is fallacy.

By those by whom the term *fallacy* has been employed — at any rate, by those by whom it was originally employed — deception has been considered not merely as a consequence more or less probable, but as a consequence the production of which was aimed at on the part at least of some of the utterers.

Ἐλεγχοι σοφιστων, arguments employed by the sophists, is the denomination by which Aristotle has designated his devices, thirteen in number, to which his commentators, such of them as write in Latin, give the name of *fallaciæ* (from *fallere* to deceive,) from which our English word *fallacies*.

That in the use of these instruments, such a thing as deception was the object of the set of men mentioned by Aristotle under the name of sophists, is altogether out of doubt. On every occasion on which they are mentioned by him, this intention of deceiving is either directly asserted or assumed.

SECTION IV.

POLITICAL FALLACIES THE SUBJECT OF THIS WORK.

THE present work confines itself to the examination and exposure of only one class of fallacies, which class is determined by the nature of the occasion in which they are employed.

The occasion here in question is that of the formation of a decision procuring the adoption or rejection of some measure of *government:* including under the notion of a measure of government, a measure of legislation as well as of administration — two operations so intimately connected, that the drawing of a

* *Vulgar errors* is a denomination which, from the work written on this subject by a physician of name in the seventeenth century, has obtained a certain degree of celebrity.

Not the moral (of which the political is a department,) but the physical, was the field of the errors which it was the object of Sir Thomas Browne to hunt out and bring to view: but of this restriction no intimation is given by the words of which the title of his work is composed.

boundary line between them will in some instances be matter of no small difficulty, but for the distinguishing of which on the present occasion, and for the purpose of the present work, there will not be any need.

Under the name of a *Treatise on Political Fallacies*, this work will possess the character, and, in so far as the character answers the design of it, have the effect of a treatise on *the art of government;*—having for its practical object and tendency, in the first place, the facilitating the introduction of such features of good government as remain to be introduced; in the next place giving them perpetuation—perpetuation, not by means of legislative clauses aiming directly at that object (an aim of which the inutility and mischievousness will come to be fully laid open to view in the course of this work,) but by means of that instrument, viz. *reason*, by which alone the endeavour can be productive of any useful effect.

Employed in this endeavour, there are two ways in which this instrument may be applied: one, the more direct, by showing, on the occasion of each proposed measure, in what way, by what probable consequences it tends to promote the accomplishment of the end or object which it professes to have particularly in view: the other, the less direct, by pointing out the irrelevancy, and thus anticipating and destroying the persuasive force, of such deceptious arguments as have been in use, or appear likely to be employed in the endeavour to oppose it, and to dissuade men from concurring in the establishment of it.

Of these two different but harmonizing modes of applying this same instrument to its several purposes, the *more direct* is that of which a sample has, ever since the year 1802, been before the public, in that collection of unfinished papers on legislation, published at *Paris* in the French language, and which had the advantage of passing through the hands of Mr. Dumont, but for whose labours it would scarcely, in the author's lifetime at least, have seen the light. To exhibit the *less direct*, but in its application the more extensive mode, is the business of the present work.

To give existence to good arguments was the object in that instance: to provide for the exposure of bad ones is the object in the present instance—to provide for the exposure of their real nature, and thence for the destruction of their pernicious force.

Sophistry is a hydra, of which, if all the necks could be exposed, the force would be destroyed. In this work they have been diligently looked out for, and in the course of it the principal and most active of them have been brought to view.

SECTION V.

DIVISION OR CLASSIFICATION OF FALLACIES.

So numerous are the instruments of persuasion which in the character of fallacies the present work will bring to view, that, for enabling the mind to obtain any tolerably satisfactory command over it, a set of divisions deduced from some source or other appeared to be altogether indispensable.

To frame these divisions with perfect logical accuracy will be an undertaking of no small difficulty—an undertaking requiring more time than either the author or editor has been able to bestow upon it.

An imperfect classification, however, being preferable to no classification at all, the author had adopted one principle of division from the situation of the utterers of fallacies, especially from the utterers in the British Houses of Parliament: fallacies of the *ins*—fallacies of the *outs*—*either-side* fallacies.

A principle of subdivision he found in the quarter to which the fallacy in question applied itself, in the persons on whom it was designed to operate; the *affections*, the *judgment*, and the *imagination*.

To the several clusters of fallacies marked out by this subdivision, a Latin affix, expressive of the faculty or affection aimed at, was given; not surely for ostentation, for of the very humblest sort would such ostentation be, but for *prominence*, for impressiveness, and thence for clearness:—arguments 1. *ad verecundiam;* 2. *ad superstitionem;* 3. *ad amicitiam;* 4. *ad metum;* 5. *ad odium;* 6. *ad invidentiam;* 7. *ad quietem;* 8. *ad socordiam;* 9. *ad superbiam;* 10. *ad judicium;* 11. *ad imaginationem.*

In the same manner, *Locke* has employed Latin denominations to distinguish four kinds of argument:—*ad verecundiam, ad ignorantiam, ad hominem, ad judicium.*

Mr. Dumont, who some few years since published in French a translation, or rather a *redaction*, of a considerable portion of the present work, divided the fallacies into three classes, according to the particular or special object to which the fallacies of each class appeared more immediately applicable. Some he supposed destined to repress discussion altogether—others to postpone it—others to perplex, when discussion could no longer be avoided. The first class he called fallacies of *authority*, the second fallacies of *delay*, and the third fallacies of *confusion:* he has also added to the name of each fallacy the Latin affix which points out the faculty or affection to which it is chiefly addressed.

The present editor* has preferred this arrangement to that pursued by the author;

* *i. e.* The Editor of the original edition.

and with some little variation he has adopted it in this work.

In addition to the supposed immediate *object* of a given class of fallacies, he has considered the *subject-matter* of each individual fallacy, with a view to the comprehending in one class all such fallacies as more nearly resemble each other in the nature of their subject-matter: and the classes he has arranged in the order in which the enemies of improvement may be supposed to resort to them according to the emergency of the moment.

First, fallacies of *authority* (including laudatory personalities;) the subject-matter of which is authority in various shapes—and the immediate object, *to repress*, on the ground of the weight of such authority, *all exercise of the reasoning faculty*.

Secondly, fallacies of *danger* (including vituperative personalities;) the subject-matter of which is the suggestion of danger in various shapes—and the object, to *repress altogether*, on the ground of such danger, the *discussion* proposed to be entered on.

Thirdly, fallacies of *delay;* the subject-matter of which is an assigning of reasons for delay in various shapes — and the object, to *postpone* such *discussion*, with a view of eluding it altogether.

Fourthly, fallacies of *confusion;* the subject-matter of which consists chiefly of vague and indefinite generalities — while the object is *to produce*, when discussion can no longer be avoided, such *confusion* in the minds of the hearers as to incapacitate them for forming a correct judgment on the question proposed for deliberation.

In the arrangement thus made, imperfections will be found, the removal of which, should the removal of them be practicable, and at the same time worth the trouble, must be left to some experter hand. The classes themselves are not in every instance sufficiently distinct from each other; the articles ranged under them respectively not appertaining with a degree of propriety sufficiently exclusive to the heads under which they are placed. Still, imperfect as it is, the arrangement will, it is hoped, be found by the reflecting reader not altogether without its use.

SECTION VI.

NOMENCLATURE OF POLITICAL FALLACIES.

BETWEEN the business of classification and that of nomenclature, the connexion is most intimate. To the work of classification no expression can be given but by means of nomenclature: no name other than what in the language of grammarians is called a *proper* name — no name more extensive in its application than is the name of an individual, can be applied; but a class is marked out, and, as far as the work of the mind is creation, *created*.

Still, however, the two operations remain not the less distinguishable: for of the class marked out, a description may be given, of any length and degree of complication: the description given may be such as to occupy entire sentences in any number. But a name, properly so called, consists either of no more than one word, and that one a noun-substantive, or at most of no more than a substantive with its adjunct; or, if of words more than one, they must be in such sort linked together as to form in conjunction no more than a sort of compound word, occupying the place of a noun-substantive in the composition of a sentence.

Without prodigious circumlocution and inconvenience, a class of objects, however well marked out by description, cannot be designated, unless we substitute for the words constituting the description, a word, or very small cluster of words, so connected as to constitute a name. In this case, nomenclature is to description what, in algebraical operation, the substitution of a single letter of the alphabet for a line of any length, composed of numerical figures or letters of the alphabet, or both together, is to the continuing and repeating at each step the complicated matter of that same line.

The class being marked out, whether by description or denomination, an operation that will remain to be performed is, if no name be as yet given to it, the finding for it and giving to it a name: if a name has been given to it, the sitting in judgment on such name, for the purpose of determining whether it presents as adequate a conception of the object as can be wished, or whether some other may not be devised by which that conception may be presented in a manner more adequate.

Blessed be he for evermore, in whatsoever robe arrayed, to whose creative genius we are indebted for the first conception of those too-short-lived vehicles, by which, as in a nutshell, intimation is conveyed to us of the essential character of those awful volumes, which, at the touch of the sceptre, become the rules of our conduct, and the arbiters of our destiny: — "The Alien Act," "The Turnpike Act," "The Middlesex Waterworks Bill," &c. &c.!

How advantageous a substitute in some cases — how useful an additament in all cases, would they not make to those authoritative masses of words called *titles*, by which so large a proportion of sound and so small a proportion of instruction are at so large an expense of attention granted to us: — "An Act to explain and amend an Act entitled An Act to explain and amend," &c. &c.!

In two, three, four, or at the outside half a

dozen words, information without pretension is given, which frequently when pretended is not given, but confusion and darkness given instead of it, in twice, thrice, four times, or half a dozen times as many lines.

Rouleaus of commodious and significative appellatives are thus issued day by day throughout the session from an invisible though not an unlicensed mint; but no sooner has the last newspaper that appeared the last day of the session made its way to the most distant of its stages, than all this learning, all this circulating medium, is as completely lost to the world and buried in oblivion as a French assignat.

So many yearly strings of words, not one of which is to be found in the works of Dryden, with whom the art of coining words fit to be used became numbered among the lost arts, and the art of giving birth to new ideas among the prohibited ones! So many words, not one of which would have found toleration from the orthodoxy of Charles Fox!

Let the workshop of invention be shut up for ever, rather than that the tympanum of taste should be grated by a new sound! Rigorous decree! — more rigorous if obedience or execution kept pace with design, than even the continent-blockading and commerce-crushing decrees proclaimed by Buonaparte.

So necessary is it, that when a thing is talked of, there should be a name to call it by—so conducive, not to say necessary, to the prevalence of reason, of common sense, and moral honesty, that instruments of deception should be talked of, and well talked of, and talked out of fashion — in a word, talked down, — that, without any other licence than the old one granted by Horace, and which, notwithstanding the acknowledged goodness of the authority, men are so strangely backward to make use of, — the author had, under the spur of necessity, struck out for each of these instruments of deception a separate barbarism, such as the tools which he had at command would enable him to produce: the objections, however, of a class of readers, who, under the denomination of *men of taste*, attach much more importance to the manner than to the matter of a composition, have induced the editor to suppress for the present some of these characteristic appellations, and to substitute for them a less expressive periphrasis.

SECTION VII.

CONTRAST BETWEEN THE PRESENT WORK AND HAMILTON'S "PARLIAMENTARY LOGIC."

Of this work, the general conception had been formed, and in the composition of it some little progress made, when the advertisements brought under the author's notice the posthumous work intituled "*Parliamentary Logic*, by the late William Gerard Hamilton," distinguished from so many other Hamiltons by the name of *Single-speech Hamilton*.

Of finding the need of a work such as the present superseded in any considerable degree by that of the right honourable orator, the author had neither hope nor apprehension: but his surprise was not inconsiderable on finding scarcely in any part of the two works any the smallest degree of coincidence.

In respect of practical views and objects, it would not indeed be true to say, that between the one and the other there exists not any relation; for there exists a pretty close one, namely, the relation of contrariety.

When, under the title of "*Directions to Servants*," Swift presented to view a collection of such various faults as servants of different descriptions had been found, or supposed by him liable to fall into, his object (it need scarce be said,) if he had any serious object beyond that of making his readers laugh, was, not that compliance, but that non-compliance, with the directions so humorously delivered, should be the practical result.

Taking that work of Swift's for his pattern, and what seemed the serious object of it for his guidance, the author of this work occasionally found, in the form of a direction for the framing of a fallacy, what seemed the most convenient vehicle for conveying a conception of its nature: as, in some instances, for conveying a conception of the nature of the figure he is occupied in the description of, a mathematician begins with giving an indication of the mode in which it may be framed, or, as the phrase is, *generated*.

On these occasions, much pains will not be necessary to satisfy the reader that the object of any instructions which may here be found for the composition of a fallacy, has been, not to promote, but as far as possible to prevent the use of it — to prevent the use of it, or at any rate to deprive it of its effect.

Such, if Gerard Hamilton is to be believed, was not the object with Gerard Hamilton: his book is a sort of school, in which the means of advocating what is a good cause, and the means of advocating what is a bad cause, are brought to view with equal frankness, and inculcated with equal solicitude for success: in a word, that which Machiavel has been supposed sometimes to aim at, Gerard Hamilton, as often as it occurs to him, does not only aim at, but aim at without disguise. Whether on this observation any such imputation as that of calumny is justly chargeable, the samples given in the course of this work will put the reader in a condition to judge.

Sketched out by himself, and finished by

his editor and panegyrist,* the political character of Gerard Hamilton may be comprised in a few words: he was determined to join with a party; he was as ready to side with one party as another; and whatever party he sided with, as ready to say any one thing as any other in support of it. Independently of party, and personal profit to be made from party,—right and wrong, good and evil, were in his eyes matters of indifference. But having consecrated himself to party — viz. the party, whatever it was, from which the most was to be got — that party being, of whatever materials composed, the party of the *ins* — that party standing constantly pledged for the protection of abuse in every shape, and, in so far as good consists in the *extirpation* of abuse, for the opposing and keeping out everything that is good, — hence it was to the opposing of whatsoever is good in honest eyes, that his powers, such as they were, were bent and pushed with peculiar energy.

One thing only he recognised as being *malum in se*, as a thing being to be opposed at any rate, and at any price, even on any such extraordinary supposition as that of its being brought forward by the party with which, at the time being, it was his lot to side. This was, *parliamentary reform*.

In the course of his forty years' labour in the service of the people, one thing he did that was good: one thing, to wit, that in the account of his panegyrist is set down on that side: —

One use of government (in eyes such as his, the principal use) is to enable men who have shares in it to employ public money in payment for private service: —

Within the view of Gerard Hamilton there lived a man whose talents and turn of mind qualified him for appearing with peculiar success in the character of an amusing companion in every good house. In this character he for a length of time appeared in the house of Gerard Hamilton: finding him an Irishman, Hamilton got an Irish pension of £300 a-year created for him, and sent him back to Ireland: the man being in Dublin, and constituting in virtue of his office a part of the Lord Lieutenant's family, he appeared in the same character and with equal success in the house of the Lord Lieutenant.†

---

* Extract from the preface to Hamilton's work: —

"He indeed considered politics as a kind of game, of which the stake or prize was the administration of the country. Hence he thought that those who conceived that one party were possessed of greater ability than their opponents, and were therefore fitter to fill the first offices in the state, might with great propriety adopt such measures (consistent with the constitution) as should tend to bring their friends into the administration of affairs, or to support them when invested with such power, without weighing in golden scales the particular parliamentary questions which should be brought forward for this purpose: as, on the other hand, they who had formed a higher estimate of the opposite party might with equal propriety adopt a similar conduct, and shape various questions for the purpose of showing the imbecility of those in power, and substituting an abler ministry, or one that they considered abler, in their room; looking on such occasions rather to the object of each motion than to the question itself. And in support of these positions, which, however short they may be of theoretical perfection, do not perhaps very widely differ (says Mr. Malone) from the actual state of things, he used to observe, that if any one would carefully examine all the questions which have been agitated in parliament from the time of the Revolution, he would be surprised to find how *few* could be pointed out in which an honest man might not conscientiously have voted on either side, however, by the force of rhetorical aggravation and the fervour of the times, they may have been represented to be of such high importance, that the very existence of the State depended on the result of the deliberation.

"Some questions, indeed, he acknowledged to be of a vital nature, of such magnitude, and so intimately connected with the safety and welfare of the whole community, that no inducement or friendly disposition to any party ought to have the smallest weight in the decision. One of these in his opinion was the proposition for a *parliamentary reform*, or in other words, for the new modelling the constitution of parliament; a measure which he considered of such moment, and of so dangerous a tendency, that he once said to a friend now living, that he would sooner suffer his right hand to be cut off than vote for it."

† "Yet, such was the warmth of his friend's feelings, and with such constant pleasure did he reflect on the many happy days which they had spent together, that he not only in the first place obtained for him a permanent provision on the establishment of Ireland,[a] but, in addition to this proof of his regard and esteem, he never ceased, without any kind of solicitation, to watch over his interest with the most lively solicitude; constantly applying in person on his behalf to every new Lord Lieutenant, if he were acquainted with him; or if that were not the case, contriving by some circuitous means to procure Mr. Jephson's re-appointment to the office originally conferred on him by Lord Townshend: and by these means chiefly he was continued for a long series of years under twelve successive governors of Ireland in the same station, which had always before been considered a temporary office." — *Parl. Log.* 44.

[a] *Note by Editor Malone:* — "A pension of £300 a-year, which the Duke of Rutland during his government, from personal regard and a high admiration of Mr. Jephson's talents, increased to £600 *per annum* for the joint lives of himself and Mrs. Jephson. He survived our author but a few years, dying at his house at Black Rock, near Dublin, of a paralytic disorder, May 31, 1803, in his sixty-seventh year."

Note. — That not content with editing, and, in this way, recommending in the lump these principles of his friend and countryman, Malone takes up particular aphorisms, and applies his mind to the elucidation of them. This may be seen exemplified in Aphorisms 243, 249.

His Grace gave permanence to the sinecure, and doubled the salary of it. Here was liberality upon liberality — here was virtue upon virtue. It is by such things that merit is displayed — it is for such things that taxes are imposed; it is for affording matter and exercise for such virtues — it is for affording rewards for such merit, that the people of every country, in so far as any good use is made of them, are made.

To a man in whose eyes public virtue appeared in this only shape, no wonder that parliamentary reform should be odious: — of parliamentary reform, the effect of which, — and in eyes of a different complexion, one main use — would be, the drying up the source of all such virtues.

Here, in regard to the matter of fact, there are two representations given of the same subject—representations perfectly concurrent in all points with one another, though from very different quarters, and beginning as well as ending with very different views, and leading to opposite conclusions.

Parliament a sort of gaming-house; members on the two sides of each house the players; the property of the people—such portion of it as on any pretence may be found capable of being extracted from them — the stakes played for. Insincerity in all its shapes, disingenuousness, lying, hypocrisy, fallacy, the instruments employed by the players on both sides for obtaining advantages in the game: on each occasion — in respect of the side on which he ranks himself — what course will be most for the advantage of the universal interest, a question never looked at, never taken into account: on which side is the prospect of personal advantage in its several shapes — this the only question really taken into consideration: according to the answer given to this question in his own mind, a man takes the one or the other of the two sides—the side of those in office, if there be room or near prospect of room for him; the side of those by whom office is but in expectancy, if the future contingent presents a more encouraging prospect than the immediately present.

To all these distinguished persons — to the self-appointed professor and teacher of political profligacy, to his admiring editor, to their common and sympathizing friend,* the bigotry-ridden preacher of hollow and common-place morality—parliamentary reform we see in an equal degree, and that an extreme one, an object of abhorrence. How should it be otherwise? By parliamentary reform, the prey, the perpetually renascent prey, the fruit and object of the game, would have been snatched out of their hands. Official pay in no case more than what is sufficient for the security of adequate service — no sinecures, no pensions, for hiring flatterers and pampering parasites: — no plundering in any shape or for any purpose: — amidst the cries of No theory! No theory! the example of America a lesson, the practice of America transferred to Britain.

The notion of the general predominance of self-regarding over social interest has been held up as a weakness incident to the situation of those whose converse has been more with books than men. Be it so: look then to those teachers, those men of practical wisdom, whose converse has been with men at least as much as with books: look in particular to this right honourable, who in the House of Commons had doubled the twenty years' lucubration necessary for law, who had served almost six apprenticeships, who in that office had served out five complete clerkships; — what says he? Self-regarding interest predominant over social interest?—self-regard predominant? No: but self-regard sole occupant: the universal interest, howsoever talked of, never so much as thought of — right and wrong, objects of avowed indifference.

Of the self-written Memoirs of Bubb Dodington, how much was said in their day!—of Gerard Hamilton's Parliamentary Logic, how little! The reason is not unobvious: Dodington was all anecdote — Hamilton was all theory. What Hamilton endeavoured to teach with Malone and Johnson for his bag-bearers, Dodington was seen to practise.

Nor is the veil of decorum cast off anywhere from his practice. In Hamilton's book for the first time has profligacy been seen stark naked. In the reign of Charles the Second, Sir Charles Sedley and others were indicted for exposing themselves in a balcony in a state of perfect nudity. In Gerard Hamilton may be seen the Sir Charles Sedley of political morality. Sedley might have stood in his balcony till he was frozen, and nobody the better, nobody much the worse: but Hamilton's self-exposure is most instructive.

Of parliamentary reform were a man to say that it is good because Gerard Hamilton was averse to it, he would fall into the use of one of those fallacies against the influence of which it is one of the objects of the ensuing work to raise a barrier:

This however may be said, and said without fallacy, viz. that it is the influence exercised by such men, and the use to which such their influence is put by them, that constitutes no small part of the political disease which has produced the demand for parliamentary reform in the character of a remedy.

To such men it is as natural and necessary that parliamentary reform should be odious, as that Botany Bay or the Hulks should be odious to thieves and robbers.

Above all other species of business, the one which Gerard Hamilton was most appre-

* See next page.

hensive of his pupils not being sufficiently constant in the practice of, is misrepresentation. Under the name of *action*, thrice was gesticulation spoken of as the first accomplishment of his profession by the Athenian orator:

By Gerard Hamilton, in a collection of aphorisms 553 in number,—in about 40, vice is recommended without disguise; twelve times is misrepresentation, *i. e.* premeditated falsehood with or without a mask, recommended in the several forms of which it presented itself to him as susceptible; viz. in the way of false addition three times, in the way of false substitution twice, and in the way of omission seven times.

He was fearful of deceiving the only persons he meant not to deceive (viz. the pupils to whom he was teaching the art of deceiving others,) had he fallen into any such omission as that of omitting in the teaching of this lesson any instruction or example that might contribute to render them perfect in it.

Of a good cause as such—of every cause that is entitled to the appellation of a good cause, it is the characteristic property that it does not stand in need—of a bad cause, of every cause that is justly designated by the appellation of a bad cause, it is the characteristic property that it does stand in need—of assistance of this kind. Not merely indifference as between good and bad, but predilection for what is bad, is therefore the cast of mind betrayed, or rather displayed, by Gerard Hamilton. For the praise of intelligence and active talent—that is, for so much of it as constitutes the difference between what is to be earned by the advocation of good causes only, and that which is to be earned by the advocation of bad causes likewise—of bad causes in preference to good ones,—for this species and degree of praise it is, that Gerard Hamilton was content to forego the merit of probity—of sincerity as a branch of probity, and take to himself the substance as well as the shape and colour of the opposite vice.

This is the work which, having been fairly written out by the author,* and thence by the editor presumed to have been intended for the press, had been "shown by him to his friend Dr. Johnson." This is the work which this same Dr. Johnson, if the editor is to be believed, "considered a very curious and masterly performance." This is the WORK in which that pompous preacher of melancholy moralities saw, if the editor is to be believed, nothing to "object to," but "the too great conciseness and refinement of some parts of it," and the occasion it gave to "a *wish* that some of the precepts had been more opened and expanded."

So far as concerns sincerity and candour in debate, the two friends indeed, even to judge of them from the evidence transmitted to us by their respective panegyrists, seem to have been worthy to smell at the same nosegay: and an "expansion and enlargement," composed by the hand that suggested it, would beyond doubt have been a "very curious and masterly," as well as amusing addition, to this "very curious and masterly performance."

Two months before his death, when, if he himself is to be believed, ambition had in such a degree been extinguished in him by age and infirmities, that after near forty years of experience a seat in parliament was become an object of indifference to him,†—four years after he had been visited by a fit of the palsy,‡—he was visited by a fit of virtue, and in the paroxysm of that fit hazarded an experiment, the object of which was to try whether, in a then approaching parliament, a seat might not be obtained without a complete sacrifice of independence. The experiment was not successful. From some Lord, whose name decorum has suppressed, he was, as his letter to his Lordship testified, "on the point of receiving" a seat; and the object of this letter was to learn whether, along with the seat, "the power of thinking for himself" might be included in the grant;—the question being accompanied with a request, that, in case of the negative, some other nominee

* Extract from the preface to Hamilton's work:—

"But in the treatise on Parliamentary Logic we have the fruit and result of the experience of one, who was by no means unconversant with law, and had himself sat in Parliament for more than forty years; who in the commencement of his political career burst forth like a meteor, and for a while obscured his contemporaries by the splendour of his eloquence; who was a most curious observer of the characteristic merits and defects of the distinguished speakers of his time; and who, though after his first effort he seldom engaged in public debate, devoted almost all his leisure and thoughts, during the long period above mentioned, to the examination and discussion of all the principal questions agitated in parliament, and of the several topics and modes of reasoning by which they were either supported or opposed.

"Hence the rules and precepts here accumulated, which are equally adapted to the use of the pleader and orator: nothing vague, or loose, or general,[a] is delivered; and the most minute particularities and artful turns of debate are noticed with admirable acuteness, subtilty, and precision. The work, therefore, is filled with practical axioms, and parliamentary and forensic wisdom, and cannot but be of perpetual use to all those persons who may have occasion to use their discursive talents within or without the doors of the House of Commons, in conversation at the bar, or in parliament.

"This tract was fairly written out by the author, and therefore may be presumed to have been intended by him for the press. He had shown it to his friend Dr. Johnson, who considered it a very curious and masterly performance."

† Page 26. ‡ Page 14.

[a] For "*nothing*," read "*the greatest part*."—J. B.

might be the object of his Lordship's "confidence."

The request was inadmissible, and the confidence found some other object.

It is in the hope of substituting men to puppets, and the will of the people to the will of noble lords, puppets themselves to ministers or secret advisers, that parliamentary reform has of late become once more an object of general desire: but parliamentary reform was that sort of thing which "he would sooner," he said, "suffer his hand to be cut off, than vote for:"* whether it was before or after the experiment that this magnanimity was displayed, the editor has not informed us.

The present which the world received in the publication of this work may on several accounts be justly termed a valuable one. The only cause of regret is, that the editor should, by the unqualified approbation and admiration bestowed upon it, have made the principles of the work as it were his own.

True it is, that where instruction is given showing how mischief may be done or aimed at, — whether it shall serve as a precept or a prohibition, depends in the upshot, upon the person on whom it operates with effect:

Many a dehortation, that not only has the effect of an exhortation, but was designed to have that effect;

Instructions how to administer poisons with success, may on the other hand have the effect of enabling a person who takes them up with an opposite view, to secure himself the more effectually against the attack of poisons;

But by the manner in which he writes, by the accessory ideas presented by the words in which the instruction is conveyed, there can seldom be much difficulty in comprehending in the delivery of his instructions whether the writer wishes that the suggestions conveyed by them should be embraced or rejected:

If occasionally there can be room for doubt in this respect, at any rate no room can there be for any in the case of Gerard Hamilton. As little can there be in the case of his editor and panegyrist: "*Qui mihi discipulus puer es, cupis atque doceri, huc ades, hæc animo concipe dicta tuo:*" The object or end in view is, on occasion of a debate in parliament — in a supreme legislative assembly — how to gain your point, whatever it be. The means indicated as conducive to that end are sometimes fair ones, sometimes foul ones; and be they fair or foul, they are throughout delivered with the same tone of seriousness and composure.

Come unto me all ye who have a point to gain, and I will show you how: bad or good, so as it be not parliamentary reform, to me it is matter of indifference.

Here, then, whatever be the influence of authority — authority in general, and that of the writer in particular — it is in the propagation of insincerity (of insincerity to be employed in the service it is most fit for, and in which it finds its richest reward) that throughout the whole course of this work, and under the name of Gerard Hamilton, not to speak of his editor and panegyrist, such authority exerts itself.

To secure their children from falling into the vice of drunkenness, it was the policy, we are told, of Spartan fathers, to exhibit their slaves in a state of inebriation, that the contempt might be felt to which a man stands exposed when the intellectual part of his frame has been thrown into the disordered state to which it is apt by this means to be reduced. An English father, if he has any regard for the morals of his son, and in particular for that vital part in which sincerity is concerned, will perhaps nowhere else find so instructive an example as Gerard Hamilton has rendered himself by this book: in that mirror may be seen to what a state of corruption the moral part of man's frame is capable of being reduced — to what a state of degradation, in the present state of parliamentary morality, a man is capable of sinking even when sober, and without any help from wine; and with what deliberate zeal he may himself exert his powers in the endeavour to propagate the infection in other minds.

* Page xxxvii.

PART I. FALLACIES OF AUTHORITY,

THE SUBJECT OF WHICH IS AUTHORITY IN VARIOUS SHAPES, AND THE OBJECT TO REPRESS ALL EXERCISE OF THE REASONING FACULTY.

WITH reference to any measures having for their object *the greatest happiness of the greatest number*, the course pursued by the adversaries of such measures has commonly been, in the first instance, to endeavour to repress altogether the exercise of the reasoning faculty, by adducing authority in various shapes as conclusive upon the subject of the measure proposed.

But before any clear view can be given of

the deception liable to be produced by the abuse of the species of argument here in question, it will be necessary to bring to view the distinction between the proper and the improper use of it.

In the ensuing analysis of Authority, one distinction ought to be borne in mind; — it is the distinction between what may be termed a question of *opinion*, or *quid faciendum;* and what may be termed a question of *fact*, or *quid factum*. Since it will frequently happen, that whilst the authority of a person in respect to a question of fact is entitled to more or less regard, it is not so entitled in respect of a question of opinion.

CHAPTER I.

§ 1. *Analysis of Authority.*

§ 2. *Appeal to Authority, in what cases fallacious.*

I. WHAT, on any given occasion, is the legitimate weight or influence of authority, regard being had to the different circumstances in which a person, the supposed declaration of whose opinion constitutes the authority in question, was placed at the time of the delivery of such declaration?

1*st*, Upon the degree of relative and adequate *intelligence* on the part of the person whose opinion or supposed opinion constitutes the authority in question, — say of the *persona cujus;* — 2*dly*, Upon the degree of relative *probity* on the part of that same person; — 3*dly*, Upon the nearness or remoteness of the relation between the immediate subject of such his opinion and the question in hand; — 4*thly*, Upon the fidelity of the medium through which such supposed opinion has been transmitted (including correctness and completeness:) upon such circumstances, the legitimately persuasive force of the authority thus constituted seems to depend: such are the sources in which any deficiency in respect of such persuasive force is to be looked for.

Deficiency of attention—*i. e.* intensity and steadiness of attention — with reference to the influencing circumstances on which the opinion, in order to be correct, required to be grounded; deficiency in respect of opportunity or matter of information, with reference to the individual question in hand; distance in point of time from the scene of the proposed measure; distance in point of place: — such, again, are the sources in which, the situation of the person in question being given, any deficiency in respect of relative and adequate intelligence is, it seems, to be looked for.

It is in the character of a cause of deficiency in relative and adequate information, that distance in point of time operates as a cause of deficiency in respect of relative and adequate intelligence; and so in regard to distance in point of place.

As to relative probity, any deficiency referable to this head will be occasioned by the exposure of the *persona cujus* to the action of sinister interest: concerning which, see Part V. Chapter III.—*Causes of the utterance of these fallacies.*

The most ordinary and conspicuous deficiency in the article of relative probity, is that of sincerity: the improbity consisting in the opposition or discrepancy between the opinion expressed and the opinion really entertained.

But as not only declaration of opinion, but opinion itself, is exposed to the action of sinister interest, — in so far as this is the case, the deficiency is occasioned in two ways: by the action of the sinister interest, either the relevant means and materials are kept out of the mind; or, if this be not found practicable, the attention is kept from fixing upon them with the degree of intensity proportioned to their legitimately persuasive force.

As to the mass of information received by any person in relation to a given subject, the correctness and completeness of such information, and thence the probability of correctness on the part of the opinion grounded on it, will be in the joint ratio of the sufficiency of the *means* of collecting such information, and the strength of the *motives* by which he was urged to the employment of those means.

On both these accounts taken together, at the top of the scale of trustworthiness stands that mass of authority which is constituted by what may be termed *scientific* or professional *opinion:* that is, opinion entertained in relation to the subject in question by a person who, by special means and motives attached to a particular situation in life, may with reason be considered as possessed of such *means* of insuring the correctness of his opinion, as cannot reasonably be expected to have place on the part of a person not so circumstanced.

As to the special *motives* in question, they will in every case be found to consist of good or evil; profit, for instance, or loss, presenting themselves as eventually likely to befall the person in question—profit or other good in case of the correctness of his opinion—loss or other evil in the event of its incorrectness.

In proportion to the force with which a man's will is operated upon by the motives in question, is the degree of attention employed in looking out for the means of information, and the use made of them in the way of reflection towards the formation of his opinion.

Thus in the case of every occupation which a man engages in with a view to profit, the hope of gaining his livelihood, and the fear of not gaining it, are the motives by which

he is urged to apply his attention to the collection of whatsoever information may contribute to the correctness of the several opinions which he may have occasion to form respecting the most advantageous method of carrying on the several operations by which such profit may be obtained.

1. The legitimately persuasive force of professional authority being taken as the highest term in the scale, the following may be noticed as expressive of so many other species of authority, occupying so many inferior degrees in the same scale: —

2. Authority derived from *power*. The greater the quantity of power a man has, no matter in what shape, the nearer the authority of his opinion comes to professional authority, in respect of the facility of obtaining the means conducive to correctness of decision.

3. Authority derived from *opulence*. Opulence — being an instrument of power, and to a considerable extent applicable in a direct way to many or most of the purposes to which power is applicable — seems to stand next after power in the scale of instruments of facility as above.

4. Authority derived from *reputation*, considered as among the efficient causes of respect. By reputation, understand, on this occasion, general reputation, not special and relative reputation, which would rank the species of authority under the head of professional authority as above.

Note, that of all these four species of authority, it is only in the case of the first that the presumable advantage which is the efficient cause of its legitimately persuasive force extends to the article of motives as well as means. By having the *motives* that tend to correctness of information, the professional man has the *means* likewise; since it is to the force of the motives under the stimulus of which he acts, that he is indebted for whatever means he acquires. It is from his having the motives, that it follows that he has the means.

But in those other cases, whatsoever be the *means* which a man's situation places within his reach, it follows not that he has the *motives* — that he is actually under the impulse of any motive sufficient to the full action of that desire and that energy by which alone he can be in an adequate degree put in possession of the means.

On the contrary, in proportion as in the scale of power the man in question rises above the ordinary level, in that same proportion, in respect of motives for exertion (be the line of action what it may,) he is apt to sink below the same level: because, the greater the quantum of the share of the general mass of objects of desire that a man is already in possession of, the greater is the amount of that portion of his desires which is already in a state of saturation, and consequently the less the amount of that portion which, remaining unsatiated, is left free to operate upon his mind in the character of a motive.

Under oriental despotism, the person at whose command the *means* of information exist in a larger proportion than they do in the instance of any other person whatever, is the *despot;* but necessary *motives* being wanting, no use is made by him of these means, and the general result is a state of almost infantine imbecility and ignorance.

Such, in kind, varying only in degree, is the case with every hand in which power is lodged, unincumbered with obligation; or, in other words, with sense of eventual danger.

In England, the king, the peer, the opulent borough-holding or county-holding country gentleman, should, on the above principle, present an instance of the sort of double scale in question, in which, while means decrease, motives rise.

But so long as he takes any part at all in public affairs, the sense of that weak kind of eventual responsibility to which, notwithstanding the prevailing habits of idolatry, the monarch, as such, stands at all times exposed, suffices to keep his intellectual faculties at a point more or less above the point of utter ignorance; whereas, short of proveable idiotism, there is no degree of imbecility that in either of those two other situations can suffice to render it matter of danger or inconvenience to the possessor, either to leave altogether unexercised the power annexed to such situation, or, without the smallest regard for the public welfare, to exercise it in whatever manner may be most agreeable or convenient to himself.

All this while, it is only on the supposition of perfect relative probity, viz. of that branch of probity that consists of sincerity, as well as absence of all such sources of delusion as to the person in question are liable to produce the effects of insincerity — in a word, it is only on the supposition of the absence of exposure to the action of any sinister interest, operating in such direction as to tend to produce either erroneous opinion, or misrepresentation of a man's opinion on the subject in question, that, in so far as it depends on the information necessary to correctness of opinion, the title of a man's authority to regard bears any proportion either to motives or to means of information as above.

On the contrary, if, either immediately or through the medium of the will, a man's understanding be exposed to the dominion of sinister interest, the more complete as well as correct the mass of relative information is which he possesses, the more completely destitute of all title to regard, *i. e.* to confidence, unless it be in the opposite direction,

will the authority, or pretended or real opinion, be.

Hence it is, that on the question, What is the system of remuneration best adapted to the purpose of obtaining the highest degree of official aptitude throughout the whole field of official service? — the authority of any person, who here or elsewhere, now or formerly, was in possession or expectation of any such situation as that of minister of state, so far from being greater than that of an average man, is not equal to 0, but in the mathematical sense negative, or so much below 0; *i. e.* so far as it affords a reason for looking upon the opposite opinion as the right and true one.

So, again, as to this question — What, in so far as concerns cognoscibility, or economy and expedition in procedure, the state of the law *ought* to be? — in the instance of any person who here or elsewhere, recently or formerly, but more particularly in this country, was in possession or expectation of any situation, professional or official, the profitableness of which, in the shape of pecuniary emolument, or in any other shape (such as power, reputation, ease, and occasionally vengeance,) depended upon the incognoscibility, the expensiveness, the dilatoriness, the vexatiousness of the system of judicial procedure — the weight of the authority — the strength of its title to credit on the part of those understandings to which the force of it is applied, — is not merely equal to 0, but in the mathematical sense negative, or so much below 0.

Note, that where, as above, the weight or probative force of the authority in question is spoken of as being not positive but negative (being rendered so by sinister interest,) what is taken for granted is, that the direction in which the authority is offered is the same as that in which the sinister interest acts; for if, the direction in which the sinister interest acts lying one way, the direction in which the opinion acts lies the other way — in such case, the title of the opinion to credit on the part of the understandings to which it is proposed, so far from being destroyed or weakened, is much increased; because the grounds for correctness of opinion, the motives and the means which in that case lead to correctness being more completely within the reach of, and according to probability present to, the minds of this class of men, the forces that tend to promote aberration having by this supposition spent themselves in vain, the chance for correctness is thereby greater.

Accordant with this, and surely enough accordant with experience and common sense, is one of the few rational rules that as yet have received admittance among the technically-established rules of evidence. In a man's own favour his own testimony is the weakest — in his disfavour, the strongest, evidence.

It is on this account that, wherever a man is in a superior degree furnished as above with means of, and motives for, obtaining relevant information, the stronger the force of the sinister interest under the action of which his opinion is delivered, the stronger is his title to attention. In the way of direct and relevant argument applying to the question in hand in a direct and specific way, if the question be susceptible of any such arguments, in proportion to the efficiency of the motives and means he has for the acquisition of such relevant information, is the probability of his bringing such information to view. If, then, instead of bringing to view any such relevant information, or by way of supplement and support to such relevant information (when weak and insufficient,) the arguments which he brings to view are of the irrelevant sort, the addition of such bad arguments affords a sort of circumstantial evidence, and that of no mean degree of probative force, of the inability of the side thus advocated to furnish any good ones.

Closeness of the relation between the immediate subject in hand, and the subject of the supposed opinion of which the authority is composed, has been mentioned as the third circumstance necessary to be considered in estimating the credit due to authority: — of this, it is evident enough, there cannot be any common and generally applicable measure: it is that sort of quantity, of the amount of which a judgment can only be pronounced in each individual case.

As to the fidelity of the *medium* through which the opinion constitutive of the authority in question has been, or is supposed to have been, transmitted, — it is only *pro memoria* that this topic is here brought to view in the list of the circumstances from which the legitimately persuasive force of an opinion constitutive of authority is liable to experience decrease: of its admission into this list the propriety is, on the bare mention, as manifest as it is in the power of reasoning to make it. In this respect, the rule and measure, as well as cause, of such decrease, stand exactly on the same ground as the rule with respect to any other evidence; authority being, to the purpose in question, neither more nor less than an article of circumstantial evidence.

The need for the legitimately persuasive force of authority, *i. e.* probability of comparatively superior information on the one hand, is in the inverse ratio of information on the part of the person on whom it is designed to operate, on the other. The less the degree in which each man is qualified to form a judgment on any subject on the ground of specific and relevant information — on the

ground of direct evidence — the more cogent the necessity he is under of trusting, with a degree of confidence more or less implicit, to that species of circumstantial evidence: and in proportion to the number of the persons who possess, each within himself, the means of forming an opinion on any given subject on the ground of such direct evidence, the greater the number of the persons to whom it ought to be matter of shame to frame and pronounce their respective decision, on no better ground than that of such inconclusive and necessarily fallacious evidence.

Of the truth of this observation, men belonging to the several classes, whose situation in the community has given to them, in conjunction with efficient power, a separate and sinister interest opposite to that of the community in general, have seldom failed to be in a sufficient degree percipient.

In this perception, in the instance of the fraternity of lawyers, may be seen one cause, though not the only one, of the anxiety betrayed, and pains taken, to keep the rule of action in a state of as complete incognoscibility as possible on the part of those whose conduct is professed to be directed by it, and whose fate is in fact disposed of by it.

In this same perception, in the instance of the clergy of old times in the Romish church, may be seen in like manner the cause, or at least one cause, of the pains taken to keep in the same state of incognoscibility the acknowledged rule of action in matters of sacred and supernatural law.

In this same perception, in the instance of the English clergy of times posterior to those of the Romish church — in this same perception may be seen one cause of the exertions made by so large a proportion of the governing classes of that hierarchy, to keep back, and if possible render abortive the system of invention which has for its object the giving to the exercise of the art of reading the highest degree of universality possible.

To return. Be the subject-matter what it may, to the account of fallacies cannot be placed any mention made of an opinion to such or such an effect, as having been delivered or intimated by such or such a person by name, when the sole object of the reference is to point out a place where relevant arguments adduced on a given occasion may be found in a more complete or perspicuous state than they are on the occasion on which they are adduced.

In the case thus supposed, there is no *irrelevancy*. The arguments referred to are by the supposition relevant ones; such as, if the person by whom they have been presented to view were altogether unknown, would not lose anything of their weight; the opinion is not presented as constitutive of authority, as carrying any weight of itself, and independently of the considerations which he has brought to view.

Neither is there any fallacy in making reference to the opinion of this or that professional person, in a case to such a degree professional or scientific, with relation to the hearers or readers, that the forming a correct judgment on such relevant and specific arguments as belong to it, is beyond their competence. In matters touching medical science, chemistry, astronomy, the mechanical arts, the various branches of the art of war, &c., no other course could be pursued.

§ 2. *Appeal to Authority, in what cases fallacious.**

The case in which reference to authority is open to the imputation of fallacy, is where, in the course of a debate touching a subject lying in such sort within the comprehension of the debaters, that argument bearing the closest relation to it would be perfectly within the sphere of their comprehension, — *authority* (a sort of argument in the case here in question not relevant) is employed in the place of such relevant arguments as might have been adduced on one side, or in opposition to irrelevant ones adduced on the other side.

But the case in which the practice of adducing authority in the character of an argument is in the highest degree exposed to the imputation of fallacy, is, where the situation of the debaters being such, that the forming a correct conception of, and judgment on, such relevant arguments as the subject admits, is not beyond their competency, the *opinion*, real or supposed, of any person who from his profession or other particular situation, derives an interest opposite to that of the public, is adduced in the character of an argument, in lieu of such relevant arguments as the question ought to furnish. — (In an Appendix to this Chapter will be given examples of persons whose declared opinions, on a question of legislation, are in a peculiar degree liable to be tinged with falsity by the action of sinister interest.)

He who, on a question concerning the propriety of any law or established practice with reference to the time being, refers to authority as decisive of the question, assumes the truth of one or other of two positions: viz. that the principle of utility — *i. e.* that the greatest happiness of the greatest number —

* "An unquestionable maxim," it is said, is this: — "Reason, and not authority, should determine the judgment:" Said? and by whom? even by a bishop; and by what bishop? even Bishop Warburton; and this is not in one work only, but in two. The above words are from his Div. Legat. ii. 302; and in his Alliance, &c. is a passage to the same effect: here, then, we have authority against authority.

is not at the time in question the proper standard for judging of the merits of the question; or, that the practice of other and former times, or the opinion of other persons, ought to be regarded in all cases as conclusive evidence of the nature and tendency of the practice — conclusive evidence, superseding the necessity and propriety of any recourse to reason or present experience.

In the first case, being really an enemy to the community, that he should be esteemed as such by all to whom the happiness of the community is an object of regard, is no more than right and reasonable, — no more than what, if men acted consistently, would uniformly take place.

In the other case, what he does is, virtually to acknowledge himself not to possess any powers of reasoning which he himself can venture to think it safe to trust to: incapable of forming for himself any judgment by which he looks upon it as safe to be determined, he betakes himself for safety to some other man, or set of men, of whom he knows little or nothing, except that they lived so many years ago; that the period of their existence was by so much anterior to his own time — by so much anterior, and consequently possessing for its guidance so much the less experience.

But when a man gives this account of himself — when he represents his own mind as labouring under this kind and degree of imbecility, — what can be more reasonable than that he should be taken at his word? — that he should be considered as a person labouring under a general and incurable imbecility, from whom nothing relevant can reasonably be expected?

He who, in place of reasoning deduced (if the subject be of a practical nature) from the consideration of the end in view, employs authority, makes no secret of the opinion he entertains of his hearers or his readers: he assumes that those to whom he addresses himself are incapable, each of them, of forming a judgment of their own. If they submit to this insult, may it not be presumed that they acknowledge the justice of it?

Of imbecility—at any rate of self-conscious and self-avowed imbecility — proportionable humility ought naturally to be the result;

On the contrary, so far from humility, — of this species of idolatry — of this worshipping of dead men's bones, — all the passions the most opposite to humility — pride, anger, obstinacy, and overbearingness, — are the frequent, not to say the constant, accompaniments.

With the utmost strength of mind that can be displayed in the field of reasoning, no reasonable man ever manifests so much heat, assumes so much, or exhibits himself disposed to bear so little, as these men, whose title to regard and notice is thus given up by themselves.

Whence this inconsistency?—whence this violence? From this alone, that having some abuse to defend — some abuse in which they have an interest and a profit — and finding it on the ground of present public interest indefensible, they fly for refuge to the only sort of argument in which so much as the pretension of being sincere in error can find countenance.

By authority, support, the strength of which is proportioned to the number of the persons joining in it, is given to systems of opinions at once absurd and pernicious — to the religion of Buddh, of Brama, of Foh, of Mahomet.

And hence it may be inferred that the probative force of authority is not increased by the number of those who may have professed a given opinion — unless, indeed, it could be proved that each individual of the multitudes who professed the opinion, possessed in the highest degree the means and motives for ensuring its correctness. Even in such a case, it would not warrant the substitution of the authority for such direct evidence and arguments as any case in debate might be able to supply, supposing the debaters capable of comprehending such direct evidence and arguments: but that, in ordinary cases, no such circumstantial evidence should possess any such legitimately probative force as to warrant the addition, much less the substitution of it, to that sort of information which belongs to direct evidence, will, it is supposed, be rendered sufficiently apparent by the following considerations: —

1. If in theory any the minutest degree of force were ascribed to the elementary monade of the body of authority thus composed, and this theory were followed up in practice, the consequence would be, the utter subversion of the existing state of things: — as for example — if distance in point of time were not sufficient to destroy the probative force of such authority, the Catholic religion would in England be to be restored to the exclusive dominion it possessed and exercised for so many centuries: the toleration laws would be to be repealed, and persecution to the length of extirpation would be to be substituted to whatever liberty in conduct and discourse is enjoyed at present; — and in this way, after the abolished religion had thus been triumphantly restored, an inexorable door would be shut against every imaginable change in it, and thence against every imaginable reform or improvement in it, through all future ages:

2. If distance in point of place were not understood to have the same effect, some other religion than the Christian — the religion of Mahomet for example, or the way of thinking

in matters of religion prevalent in China — would have to be substituted by law to the Christian religion.

In authority, defence, such as it is, has been found for every imperfection, for every abuse, for every the most pernicious and most execrable abomination that the most corrupt system of government has ever husbanded in its bosom: —

And here may be seen the mischief necessarily attached to the course of him whose footsteps are regulated by the finger of this blind guide.

What is more, from hence may inferences be deduced — nor those ill-grounded ones — respecting the probity or improbity, the sincerity or insincerity, of him who, standing in a public situation, blushes not to look to this blind guide, to the exclusion of, or in preference to, reason — the only guide that does not begin with shutting his own eyes, for the purpose of closing the eyes of his followers.

As the world grows older, if at the same time it grows wiser (which it will do unless the period shall have arrived at which experience, the mother of wisdom, shall have become barren,) the influence of authority will in each situation, and particularly in parliament, become less and less.

Take any part of the field of moral science, private morality, constitutional law, private law — go back a few centuries, and you will find argument consisting of reference to authority, not exclusively, but in as large a proportion as possible. As experience has increased, authority has been gradually set aside, and reasoning, drawn from facts, and guided by reference to the end in view, true or false, has taken its place.

Of the enormous mass of Roman law heaped up in the school of Justinian — a mass, the perusal of which would employ several lives occupied by nothing else — materials of this description constitute by far the greater part. A throws out at random some loose thought: B, catching it up, tells you what A thinks — at least, what A said: C tells you what has been said by A and B; and thus, like an avalanche, the mass rolls on.

Happily, it is only in matters of law and religion that endeavours are made, by the favour shown and currency given to this fallacy, to limit and debilitate the exercise of the right of private inquiry in as great a degree as possible, though at this time of day the exercise of this essential right can no longer be suppressed in a complete and direct way by legal punishment.

In mechanics, in astronomy, in mathematics, in the new-born science of chemistry — no one has at this time of day either effrontery or folly enough to avow, or so much as to insinuate, that the most desirable state of these branches of useful knowledge, the most rational and eligible course, is to substitute decision on the ground of authority, to decision on the ground of direct and specific evidence.

In every branch of physical art and science, the folly of this substitution or preference is matter of demonstration — is matter of intuition, and as such is universally acknowledged. In the moral branch of science, religion not excluded, the folly of the like receipt for correctness of opinion would not be less universally recognised, if the wealth, the ease, and the dignity attached to and supported by the maintenance of the opposite opinion, did not so steadily resist such recognition.

Causes of the employment and prevalence of this fallacy.

It is obvious that this fallacy, in all its branches, is so frequently resorted to by those who are interested in the support of abuses, or of institutions pernicious to the great body of the people, with the intention of suppressing all exercise of reason. A foolish or untenable proposition, resting on its own support or the mere credit of the utterer, could not fail speedily to encounter detection and exposure; — the same proposition, extracted from a page of Blackstone, or from the page or mouth of any other person to whom the idle and unthinking are in the habit of unconditionally surrendering their understandings, shall disarm all opposition.

Blind obsequiousness, ignorance, idleness, irresponsibility, anti-constitutional dependence, anti-constitutional independence, are the causes which enable this fallacy to maintain such an ascendency in the governing assemblies of the British empire.

First, In this situation one man is on each occasion ready to borrow an opinion of another, because through ignorance and imbecility he feels himself unable, or through want of solicitude unwilling, to form one for himself; and he is thus ignorant, if natural talent does not fail him, because he is so *idle*. Knowledge, especially in so wide and extensive a field, requires study; study, labour of mind, bestowed with more or less energy, for a greater or less length of time.

But, secondly, In a situation for which the strongest talents would not be more than adequate, there is frequently a failure of natural talent; because in so many instances admission to that situation depends either on the person admitted, or on others to whom, whether he has or has not the requisite talents is a matter of indifference, that no degree of intellectual deficiency, short of palpable idiocy, can have the effect of excluding a man from occupying it.

Thirdly, The sense of responsibility is in the instance of a large proportion of the members wanting altogether; because in so small

a proportion are they at any time in any degree of dependence on the people whose fate is in their hands, and because, in the instance of the few who are in any degree so dependent, the efficient cause, and consequently the feeling of such dependence, endures during so small a proportion of the time for which they enjoy their situations: because also, while so few are dependent on those on whom they ought to be dependent, so many are dependent on those who ought to be dependent on them — those servants of the crown, on whose conduct they are commissioned by their constituents to act as judges. What share of knowledge, intelligence, and natural talent, is in the House, is thus divided between those who are, and their rivals who hope to be, servants of the crown. The consequence is, that, those excepted in whom knowledge, intelligence, and talent, are worse than useless, the House is composed of men, the furniture of whose minds is made up of discordant prejudices, of which on each occasion they follow that by which the interest or passion of the moment is most promoted.

Then, with regard to responsibility, so happily have matters been managed by the house, — a seat there is not less clear of obligation than a seat in the opera-house: in both, a man takes his seat, then only when he cannot find more amusement elsewhere; for both the qualifications are the same, — a ticket begged or bought: in neither is a man charged with any obligation, other than the negative one of not being a nuisance to the company; in both, the length as well as number of attendances depends on the amusement a man finds, except, in the case of the house, as regards the members dependent on the crown. True it is, that a self-called independent member is not necessarily ignorant and weak: if by accident a man possessed of knowledge and intelligence is placed in the house, his seat will not deprive him of his acquirements. All, therefore, that is meant is, only that ignorance does not disqualify, not that knowledge does. Of the crown and its creatures it is the interest that this ignorance be as thick as possible. Why? Because, the thicker the ignorance, the more completely is the furniture of men's minds made up of those interest-begotten prejudices, which render them blindly obsequious to all those who, with power in their hands, stand up to take the lead.

But the Emperor of Morocco is not more irresponsible, and therefore more likely to be ignorant and prone to be deceived by the fallacy of authority, than a member of the British Parliament: — the Emperor of Morocco's power is clear of obligation; so is the member's: — the emperor's power, it is true is an integer, and the member's but a fraction of it; but no ignorance prevents a man from becoming or continuing Emperor of Morocco, nor from becoming or continuing a member: — the emperor's title is derived from birth; so is that of many a member: — to enjoy his despotism, no fraud, insincerity, hypocrisy, or jargon, is necessary to the emperor; much of all to the member: — by ascending and maintaining his throne, no principle is violated by the emperor; by the member, if a borough-holder, many are violated on his taking and retaining his seat: — by being a despot, the emperor is not an impostor; the member is: — the emperor pretends not to be a trustee, agent, deputy, delegate, representative; lying is not among the accompaniments of his tyranny and insolence; the member does pretend all this, and (if a borough-holder) lies. A trust-holder? Yes; but a trust-breaker; — an agent? Yes; but for himself; — a representative of the people? Yes; but so as Mr. Kemble is of Macbeth; — a deputy? Yes; because it has not been in their power to depute, to delegate anybody else: — deputy, — delegate, — neither title he assumes but for argument, and when he cannot help it; deputation being matter of fact, the word presents an act with all its circumstances — viz. fewness of the electors, their want of freedom, &c.; representation is a more convenient word — the acts, &c. are kept out of sight by it — it is a mere fiction, the offspring of lawyer-craft, and any one person or thing may be represented by any other: by canvass with colours, a man is represented; by a king, the whole people; by an ambassador, the king, and thus the people.

Remedy against the influence of this fallacy.

For banishing ignorance, for substituting to it a constantly competent measure of useful, appropriate, and general instruction, the proper, the necessary, the only means, lie not deep beneath the surface.

The sources of instruction being supposed at command, and the quantity of natural talent given, the quantity of information obtained will in every case be as the quantity of mental labour employed in the collection of it — the quantity of mental labour, as the aggregate strength of the motives by which a man is excited to labour.

In the existing order of things, there is, comparatively speaking, no instruction obtained, because no labour is bestowed: no labour is bestowed, because none of the motives by which men are excited to labour are applied in this direction.

The situation being by the supposition an object of desire, if the case were such, that without labour employed in obtaining instruction, there would be no chance of obtaining the situation, or but an inferior chance; —

while, in case of labour so employed, there would be a certainty, or a superior chance: — here, instruction would have its motives; — here, labour applied to the attainment of instruction — here, consequently, instruction itself — would have its probably efficient cause.

The quality—*i. e.* the relative applicability of the mass of information obtained — is an object not to be overlooked.

The goodness of the quality will depend on the liberty enjoyed in respect of the choice. By prohibitions, with penalties attached to the delivery of alleged information relative to a subject in question, or any part of it, the quality of the whole mass is impaired, and an implied certificate is given of the truth and utility of whatsoever portion is thus endeavoured to be suppressed.

APPENDIX.

Examples of descriptions of persons whose declared opinions upon a question of legislation are peculiarly liable to be tinged with falsity by the action of sinister interest.

1. Lawyers; oppositeness of their interest to the universal interest.

THE opinions of lawyers in a question of legislation, particularly of such lawyers as are or have been practising advocates, are peculiarly liable to be tinged with falsity by the operation of sinister interest. To the interest of the community at large, that of every advocate is in a state of such direct and constant opposition (especially in civil matters,) that the above assertion requires an apology to redeem it from the appearance of trifling: the apology consists in the extensively prevailing propensity to overlook and turn aside from a fact so entitled to notice. It is the people's interest, that delay, vexation, and expense of procedure, should be as small as possible: — it is the advocate's, that they should be as great as possible; viz. expense, in so far as his profit is proportioned to it — factitious vexation and delay, in so far as inseparable from the profit-yielding part of the expense. As to uncertainty in the law, it is the people's interest that each man's security against wrong should be as complete as possible; that all his rights should be known to him; that all acts, which in the case of his doing them will be treated as offences, may be known to him as such, together with their eventual punishment, that he may avoid committing them, and that others may, in as few instances as possible, suffer either from the wrong, or from the expensive and vexatious remedy. Hence it is their interest, that as to all these matters the rule of action, in so far as it applies to each man, should at all times be not only discoverable, but actually present to his mind. Such knowledge, which it is every man's interest to possess to the greatest, it is the lawyer's interest that he possess it to the narrowest, extent, possible. It is every man's interest to keep out of lawyers' hands as much as possible — it is the lawyer's interest to get him in as often, and keep him in as long, as possible, — and thence, that any written expression of the words necessary to keep non-lawyers out of his hand may as long as possible be prevented from coming into existence; and when in existence, may as long as possible be kept from being present to his mind, — and when presented, from staying there.* It is the lawyer's interest, therefore, that people should continually suffer for the non-observance of laws, which, so far from having received efficient promulgation, have never yet found any authoritative expression in words. This is the perfection of oppression: yet, propose that access to knowledge of the laws be afforded by means of a code, lawyers, one and all, will join in declaring it impossible. To any effect, as occasion occurs, a judge will forge a rule of law: to that same effect, in any determinate form of words, propose to make a law, that same judge will declare it impossible. It is the judge's interest that on every occasion his declared opinion be taken for the standard of right and wrong — that whatever he declares right or wrong be universally received as such, how contrary soever such declaration be to truth and utility, or to his own declaration at other times: — hence, that within the whole field of law, men's opinions of right and wrong should be as contradictory, unsettled, and thence as obsequious to him as possible; in particular, that the same conduct which to others would occasion shame and punishment, should, to him and his, occasion honour and reward; that on condition of telling a lie, it should be in his power to do what he pleases, the injustice and falsehood being regarded with complacency and reverence; that as often as by falsehood, money, or advantage in any other shape can be produced to him, it should be regarded as proper for him to employ reward or punishment, or both, for the procurement of such falsehood. Consistently with men's abstaining from violences, by which the person and property of him and his would be alarmingly endangered, it is his interest that intellectual as well as moral depravation should be as intense and extensive as possible; that transgressions cognizable by him

* A considerable proportion of what is termed the common law of England is in this oral and unwritten state. The cases in which it has been clothed with words — that is, in which it has been framed and pronounced — are to be found in the various collections of reported decisions. These decisions, not having the sanction of a law passed by the legislature, are confirmed or overruled at pleasure by the existing judges; so that, except in matters of the most common and daily occurrence, they afford no rule of action at all.

should be as numerous as possible; that injuries and other transgressions committed by him should be reverenced as acts of virtue; that the suffering produced by such injuries should be placed, not to his account, but to the immutable nature of things, or to the wrongdoer, who, but for the encouragement from him, would not have become such. His professional and personal interest being thus adverse to that of the public, from a lawyer's declaration that the tendency of a proposed law relative to procedure, &c. is pernicious, the contrary inference may not unreasonably be drawn. From those habits of misrepresenting their own opinion (*i. e.* of insincerity) which are almost peculiar to this in comparison with other classes, one presumption is, that he does not entertain the opinion thus declared; — another, that if he does, he has been deceived into it by sinister interest, and the authority of co-professional men, in like manner deceivers or deceived: in other words, it is the result of interest-begotten prejudice. In the case of every other body of men, it is generally expected that their conduct and language will be for the most part directed by their own interest, that is, by their own view of it. In the case of the lawyer, the ground of this persuasion, so far from being weaker, is stronger than in any other case. His evidence being thus *interested evidence*, according to his own rules his declaration of opinion on the subject here pointed out would not be so much as hearable. It is true, were those rules consistently observed, judicature would be useless, and society dissolved: accordingly they are not so observed, but observed or broken pretty much at pleasure; but they are not the less among the number of those rules, the excellence and inviolability of which the lawyer is never tired of trumpeting. But on any point such as those in question, nothing could be more unreasonable, nothing more inconsistent with what has been said above, than to refuse him a *hearing*. On every such point, his habits and experience afford him facilities not possessed by any one else, for finding relevant and specific arguments, when the nature of the case affords any; but the surer he is of being able to find such arguments, if any such are to be found, the stronger the reason for treating his naked declaration of opinion as unworthy of all regard: accompanied by specific arguments, it is useless; destitute of them, it amounts to a virtual confession of their non-existence.

So matters stand on the question, what *ought* to be law?

On the question what the law *is*, so long as the rule of action is kept in the state of common, *alias* unwritten, *alias* imaginary law, authority, though next to nothing, is everything. The question is, what on a given occasion A (the judge) is likely to think: wait till your fortune has been spent in the inquiry, and you will know; but forasmuch as it is naturally a man's wish to be able to give a guess what the result will eventually be, before he has spent his fortune, in the view if possible to avoid spending his fortune, and getting nothing in return for it, he applies, through the medium of B (an attorney,) for an opinion to C (a counsel), who, considering what D (a former judge) has, on a subject supposed to be more or less analogous to the one in question, said or been supposed to say, deduces therefrom his guess as to what, when the time comes, judge A, he thinks, will say, and gives it you. A shorter way would be, to put the question at once to A; but, for obvious reasons, this is not permitted.

On many cases, again, as well-grounded a guess might be had of an astrologer for five shillings, as of a counsel for twice or thrice as many guineas, but that the lawyer considers the astrologer as a smuggler, and puts him down.

But Packwood's opinion on the goodness of his own razors would be a safer guide for judging of their goodness, than a judge's opinion on the goodness of a proposed law: it is Packwood's interest that his razors be as good as possible; — the judge's, that the law *be* as bad, yet *thought to be* as good, as possible. It would not be the judge's interest that his commodity should be thus bad, if, as in the case of Packwood, the customer had other shops to go to; but in this case, even when there are two shops to go to, the shops being in confederacy, the commodity is equally bad in both; and the worse the commodity, the better it is said to be. In the case of the judge's commodity, no experience suffices to undeceive men; the bad quality of it is referred to any cause but the true one.

Example 2. Churchmen; oppositeness of their interest to the universal interest.

In the lawyer's case it has been shown, that on the question, what on such or such a point *ought* to be law, — to refer to a lawyer's opinion, given without or against specific reasons, is a fallacy — its tendency, in proportion to the regard paid to it, deceptious; — the cause of this deceptious tendency, sinister interest, to the action of which all advocates and (being made from advocates) all judges stand exposed. To the churchman's case the same reasoning applies: as in the lawyer's case, the objection does not arise on the question, what law *is*, but what *ought to be* law, — so in the churchman's case, it does not arise as to what in matters of religion is law, but as to what in those matters ought to be law. On a question not connected with religion, reference to

a churchman's opinion as *such*, as authority, can scarcely be considered as a fallacy, such opinion not being likely to be considered as constitutive of authority. To understand how great would be the probability of deception, if on the question, what in matters of religion ought to be law, the unsupported opinion of a churchman were to be regarded as authority, we must develope the nature and form of the sinister interest by which any declaration of opinion from such a quarter is divested of all title to regard. The sources of a churchman's sinister interest are as follows: —

1. On entering into the profession, as condition precedent to advantage from it in the shape of subsistence and all other shapes, he makes of necessity a solemn and recorded declaration of his belief in the truth of 39 articles, framed 262 years ago — the date of which, the ignorance and violence of the time considered, should suffice to satisfy a reflecting mind of the impossibility of their being all of them really believed by any person at present.

2. In this declaration is generally understood to be included an engagement or undertaking, in case of original belief and subsequent change, never to declare, but if questioned, to deny such change.

3. In the institution thus established, he beholds shame and punishment attached to sincerity — rewards in the largest quantity to absurdity and insincerity. Now the presumptions resulting from such an application of reward and punishment, to engage men to declare assent to given propositions, are — 1st, That the proposition is not believed by the proposer; 2. Thence, that it is not true; 3. Thence, that it is not believed by the acceptor. It is impossible by reward or punishment to produce real and immediate belief: but the following effects may certainly be produced: — 1. The abstaining from any declaration of disbelief; 2. Declaration of belief; 3. The turning aside from all considerations tending to produce disbelief; 4. The looking out for, and fastening exclusive attention to, all considerations tending to produce belief — authority especially, by which a sort of vague and indistinct belief of the most absurd propositions has everywhere been produced.

On no other part of the field of knowledge are reward or punishment now-a-days considered as fit instruments for the production of assent or dissent. A schoolmaster would not be looked upon as sane, who, instead of putting Euclid's Demonstrations into the hands of his scholar, should, without the Demonstrations, put the Propositions into his hand, and give him a guinea for signing a paper declarative of his belief in them, or lock him up for a couple of days without food on his refusal to sign it. And so in chemistry, mechanics, husbandry, astronomy, or any other branch of knowledge. It is true, that in those parts of knowledge in which assent and dissent are left free, the importance of truth may be esteemed not so great as here, where it is thus influenced; but the more important the truth, the more flagrant the absurdity and tyranny of employing, for the propagation of it, instruments, the employment of which has a stronger tendency to propagate error than truth.

4. For teaching such religious truths as men are allowed to teach, together with such religious error as they are thus forced to teach, the churchman sees rewards allotted in larger quantities than are allotted to the most useful services. Of much of the matter of reward thus bestowed, the disposal is in the king's hands, with the power of applying it, and motives for applying it, to the purpose of parliamentary service, paying for habitual breach of trust, and keeping in corrupt and secret dependence on his agents, those agents of the people whose duty it is to sit as judges over the agents of the king. In Ireland, of nine-tenths of those, on pretence of instructing whom this vast mass of reward is extorted, it is known, that, being by conscience precluded from hearing, it is impossible that they should derive any benefit from such instruction.

In Scotland, where government reward is not employed in giving support to it, Church-of-Englandism is reduced to next to nothing.

The opinions which, in this state of things, interest engages a churchman to support, are — 1. That reward to the highest extent has no tendency to promote insincerity, even where practicable, to an unlimited extent, and without chance of detection; 2. Or that money given in case of compliance, refused in case of non-compliance, is not reward for compliance; 3. Or that punishment applied in case of non-compliance, withheld in case of compliance, is not punishment; 4. Or that insincerity is not vice but virtue, and as such ought to be promoted; 5. That it is not merely consistent with, but requisite to, good government to extort money from poor and rich, to be applied as reward for doing nothing, or for doing but a small part of that which is done by others for a small proportion of the same reward, and this on pretence of rendering service, which nine-tenths of the people refuse to receive.

It is the interest of the persons thus engaged in a course of insincerity, that by the same means perseverance in the same course should be universal and perpetual; for suppose, in case of the reward being withheld, the number annually making the same declaration should be reduced to half: this would be presumptive evidence of insincerity on the part of half of those who made it before.

The more flagrant the absurdity, the stronger is each man's interest in engaging

as many as possible in joining with him in the profession of assent to it; for the greater the number of such co-declarants, the greater the number of those of whose professions the elements of authority are composed, and of those who stand precluded from casting on the rest the imputation of insincerity.

The following, then, are the abuses in the defence of which all churchmen are enlisted: 1. Perpetuation of immorality in the shape of insincerity; 2. Of absurdity in subjects of the highest importance; 3. Extortion inflicted on the many for the benefit of the few; 4. Reward bestowed on idleness and incapacity, to the exclusion of labour and ability; 5. The matter of corruption applied to the purposes of corruption in a constant stream; 6. In one of these kingdoms, a vast majority of the people kept in degradation, avowedly for no other than the above purposes. But whoever is engaged by interest in the support of any one government abuse, is engaged in the support of all, each giving to the others his support in exchange.

It being the characteristic of abuse to need and receive support from fallacy, it is the interest of every man who derives profit from abuse in any shape, to give the utmost currency to fallacy in every shape—viz. as well to those fallacies which render more particular service to others' abuses, as those which render such service to his own. It being the interest of each person so situated to give the utmost support to abuse, and the utmost currency to fallacy in every shape, it is also his interest to give the utmost efficiency to the system of education by which men are most effectually divested both of the power and will to detect and expose fallacies, and thence to suppress every system of education in proportion as it has a contrary tendency. Lastly, the stronger the interest by which a man is urged to give currency to fallacy, and thus to propagate deception, the more likely is it that such will be his endeavour: the less fit, therefore, will his opinion be to serve in the character of authority, as a standard and model for the opinions of others.

CHAPTER II.

THE WISDOM OF OUR ANCESTORS; OR CHINESE ARGUMENT — (*ad verecundiam.*)

§ 1. *Exposition.*

THIS argument consists in stating a supposed repugnancy between the proposed measure, and the opinions of men by whom the country of those who are discussing the measure was inhabited in former times; these opinions being collected either from the express words of some writer living at the period of time in question, or from laws or institutions that were then in existence.

"*Our wise ancestors*" — "*The wisdom of our ancestors*" — "*The wisdom of ages*" — "*Venerable antiquity*" — "*Wisdom of old times:*" —

Such are the leading terms and phrases of propositions, the object of which is to cause the alleged repugnance to be regarded as a sufficient reason for the rejection of the proposed measure.

§ 2. *Exposure.*

This fallacy affords one of the most striking of the numerous instances in which, under the conciliatory influence of *custom* — that is, of *prejudice* — opinions the most repugnant to one another are capable of maintaining their ground in the same intellect.

This fallacy, prevalent as it is in matters of law, is directly repugnant to a principle or maxim universally admitted in almost every other department of human intelligence, and which is the foundation of all useful knowledge and of all rational conduct.

"Experience is the mother of wisdom," is among the maxims handed down to the present and all future ages, by the wisdom, such as it has been, of past ages.

No! says this fallacy, the true mother of wisdom is not *experience*, but *inexperience*.

An absurdity so glaring carries in itself its own refutation; and all that we can do is, to trace the causes which have contributed to give to this fallacy such an ascendency in matters of legislation.

Among the several branches of the fallacies of authority, the cause of delusion is more impressive in this than in any other.

1. From inaccuracy of conception arises incorrectness of expression; from which expression, conception, being produced again, error, from having been a momentary cause, comes to be a permanent effect.

In the very denomination commonly employed to signify the portion of time to which the fallacy refers, is virtually involved a false and deceptious proposition, which, from its being employed by every mouth, is at length, without examination, received as true.

What in common language is called *old* time, ought (with reference to any period at which the fallacy in question is employed) to be called *young* or early time.

As between individual and individual living at the same time and in the same situation, he who is old possesses, as such, more experience than he who is young; — as between generation and generation, the reverse of this is true, if, as in ordinary language, a preceding generation be, with reference to a succeeding generation, called *old*, the *old* or preceding generation could not have had so much experience as the succeeding. With respect to such of the materials or sources of wisdom which have come under the cognizance of their own senses, the two are on a par; — with respect to such of those materials

and sources of wisdom as are derived from the reports of others, the later of the two possesses an indisputable advantage.

In giving the name of old or elder to the earlier generation of the two, the misrepresentation is not less gross, nor the folly of it less incontestable, than if the name of old man or old woman were given to the infant in its cradle.

What, then, is the wisdom of the times called old? Is it the wisdom of gray hairs? No: it is the wisdom of the cradle.*

The learned and honourable gentlemen of THIBET do homage to superior wisdom — superiority raised to the degree of divinity — in the person of an infant lying and squalling in his cradle.

The learned and honourable gentlemen of WESTMINSTER set down as impostors the LAMAS of THIBET, and laugh at the folly of the deluded people on whom such imposture passes for sincerity and wisdom.

But the worship paid at THIBET to the infant body of the present day, is, if not the exact counterpart, the type at least of the homage paid at WESTMINSTER to the infant minds of those who have lived in earlier ages.

2. Another cause of delusion which promotes the employment of this fallacy, is the reigning prejudice in favour of the dead — a prejudice which in former times contributed more than anything else to the practice of idolatry: the dead were speedily elevated to the rank of divinities; the superstitious invoked them, and ascribed a miraculous efficacy to their relics.

This prejudice, when examined, will be seen to be no less indefensible than pernicious — no less pernicious than indefensible.

By propagating this mischievous notion, and acting accordingly, the man of selfishness and malice obtains the praise of humanity and social virtue. With this jargon in his mouth, he is permitted to sacrifice the real interests of the living to the imaginary interests of the dead. Thus imposture, in this shape, finds in the folly or improbity of mankind a never-failing fund of encouragement and reward.

De mortuis nil nisi bonum; — WITH all its absurdity, the adage is but too frequently received as a leading principle of morals. Of two attacks, which is the more barbarous—on a man that does feel it, or on a man that does not? On the man that does feel it, says the principle of utility: on the man that does not, says the principle of caprice and prejudice — the principle of sentimentalism — the principle in which imagination is the sole mover — the principle in and by which feelings are disregarded as not worth notice.

The same man who bepraises you when dead, would have plagued you without mercy when living.

Thus as between Pitt and Fox. While both were living, the friends of each reckoned so many adversaries in the friends of the other. On the death of him who died first, his adversaries were converted into friends. At what price this friendship was paid for by the people, is no secret.† See the Statute Book, see the debates of the times, and see *Defence of Economy* against Burke and Rose.‡

The cause of this so extensively-prevalent and extensively-pernicious propensity lies not very deep.

A dead man has no rivals, — to nobody is he an object of envy: in whosesoever way he may have stood when living — when dead, he no longer stands in anybody's way. If he was a man of genius, those who denied him any merit during his life—even his very enemies, changing their tone all at once, assume an air of justice and kindness, which costs them nothing, and enables them, under pretence of respect for the dead, to gratify their malignity towards the living.

Another class of persons habitually exalt the past for the express purpose of depressing and discouraging the present generation.

It is characteristic of the same sort of persons, as well as of the same system of politics, to idolize, under the name of wisdom of our ancestors, the wisdom of untaught inexperienced generations, and to undervalue and cover with every expression of contempt that the language of pride can furnish, the supposed ignorance and folly of the great body of the people.‖

So long as they keep to vague generalities — so long as the two objects of comparison are each of them taken in the lump — wise ancestors in one lump, ignorant and foolish mob of modern times in the other — the weakness of the fallacy may escape detection. Let them but assign for the period of superior wisdom any determinate period whatsoever, not only will the groundlessness of the notion be apparent (class being compared with class in that period and the present one,) but, unless the antecedent period be, comparatively speaking a very modern one, so wide will be the disparity, and to such an amount in favour of modern times, that, in comparison of the lowest class of the people in modern times

* No one will deny that preceding ages have produced men eminently distinguished by benevolence and genius; it is to them that we owe in succession all the advances which have hitherto been made in the career of human improvement: but as their talents could only be developed in proportion to the state of knowledge at the period in which they lived, and could only have been called into action with a view to then-existing circumstances, it is absurd to rely on their authority, at a period and under a state of things altogether different.

† For the payment of Mr. Pitt's creditors was voted £40,000 of the public money: — to Mr. Fox's widow, £1500 a-year.

‡ Vol. V. p. 278, *et seq.*

‖ A "Burdett mob," for example.

(always supposing them proficients in the art of reading, and their proficiency employed in the reading of newspapers,) the very highest and best informed class of these wise ancestors will turn out to be grossly ignorant.

Take, for example, any year in the reign of Henry the Eighth, from 1509 to 1546. At that time the House of Lords would probably have been in possession of by far the larger proportion of what little instruction the age afforded: in the House of Lords, among the laity, it might even then be a question whether without exception their Lordships were all of them able so much as to read. But even supposing them all in the fullest possession of that useful art, political science being the science in question, what instruction on the subject could they meet with at that time of day?

On no one branch of legislation was any book extant, from which, with regard to the circumstances of the then present times, any useful instruction could be derived: distributive law, penal law, international law, political economy, so far from existing as sciences, had scarcely obtained a name: in all those departments, under the head of *quid faciendum*, a mere blank: the whole literature of the age consisted of a meagre chronicle or two, containing short memorandums of the usual occurrences of war and peace, battles, sieges, executions, revels, deaths, births, processions, ceremonies, and other external events; but with scarce a speech or an incident that could enter into the composition of any such work as a history of the human mind—with scarce an attempt at investigation into causes, characters, or the state of the people at large. Even when at last, little by little, a scrap or two of political instruction came to be obtainable, the proportion of error and mischievous doctrine mixed up with it was so great, that whether a blank unfilled might not have been less prejudicial than a blank thus filled, may reasonably be matter of doubt.

If we come down to the reign of James the First, we shall find that Solomon of his time, eminently eloquent as well as learned, not only among the crowned but among uncrowned heads, marking out for prohibition and punishment the practices of devils and witches, and without any the slightest objection on the part of the great characters of that day in their high situations, consigning men to death and torment for the misfortune of not being so well acquainted as he was with the composition of the Godhead.

Passing on to the days of Charles the Second, even after Bacon had laid the foundations of a sound philosophy, we shall find Lord Chief-Justice Hale (to the present hour chief god of the man of law's idolatry) unable to tell (so he says himself) what *theft* was; but knowing at the same time too well what witchcraft was; hanging men with the most perfect complacency for both crimes, amidst the applauses of all who were wise and learned in that blessed age.

Under the name of Exorcism, the Catholic liturgy contains a form of procedure for driving out devils:—even with the help of this instrument, the operation cannot be performed with the desired success but by an operator qualified by holy orders for the working of this as so many other wonders.

In our days and in our country the same object is attained, and beyond comparison more effectually, by so cheap an instrument as a common newspaper: before this talisman, not only devils, but ghosts, vampires, witches, and all their kindred tribes, are driven out of the land, never to return again: the touch of holy water is not so intolerable to them as the bare smell of printers' ink.

If it is absurd to rely on the wisdom of our ancestors, it is not less so to vaunt their probity: they were as much inferior to us in that point as in all others; and the further we look back, the more abuses we shall discover in every department of government. Nothing but the enormity of those abuses has produced that degree of comparative amendment on which at present we value ourselves so highly. Till the human race was rescued from that absolute slavery under which nine-tenths of every nation groaned, not a single step could be made in the career of improvement; and, take what period we will in the lapse of preceding ages, there is not one which presents such a state of things as any rational man would wish to see entirely re-established.

Undoubtedly, the history of past ages is not wanting in some splendid instances of probity and self-devotion; but in the admiration which these excite, we commonly overrate their amount, and become the dupes of an illusion occasioned by the very nature of an extensive retrospect. Such a retrospect is often made by a single glance of the mind: in this glance, the splendid actions of several ages (as if for the very purpose of conveying a false estimate of their number and contiguity) present themselves, as it were, in a a lump, leaving the intervals between them altogether unnoticed. Thus groves of trees, which at a distance present the appearance of thick and impenetrable masses, turn out on nearer approach to consist of trunks widely separated from each other.

Would you, then, have us speak and act as if we had never had any ancestors? Would you because recorded experience, and along with it wisdom, increases from year to year, annually change the whole body of our laws? By no means: such a mode of reasoning and acting would be more absurd even than that which has just been exposed; and *provisional* adherence to existing establishments is grounded on considerations much more ra-

tional than a reliance on the wisdom of our ancestors. Though the *opinions* of our ancestors are as such of little value, their *practice* is not the less worth attending to; that is, in so far as their practice forms part of our own experience. However, it is not so much from what they did, as from what they underwent (good included, as well as evil,) that our instruction comes. Independently of consequences, what they did, is no more than evidence of what they thought; nor yet, in legislation, is it evidence of what they thought best for the whole community, but only of what the rulers thought would be best for themselves, in periods when every species of abuse prevailed, unmitigated by the existence of either public press or public opinion. From the facts of their times, much information may be derived — from the opinions, little or none. As to opinions, it is rather from those which were foolish, than from those which were well grounded, that any instruction can be derived. From foolish opinions comes foolish conduct; from the most foolish conduct, the severest disaster; and from the severest disaster, the most useful warning. It is from the folly, not from the wisdom of our ancestors, that we have so much to learn; and yet it is to their wisdom, and not to their folly, that the fallacy under consideration sends us for instruction.

It seems, then, that our ancestors, considering the disadvantages under which they laboured, could not have been capable of exercising so sound a judgment on their interests as we on ours: but as a knowledge of the facts on which a judgment is to be pronounced is an indispensable preliminary to the arriving at just conclusions, and as the relevant facts of the later period must all of them individually, and most of them specifically, have been unknown to the man of the earlier period, it is clear that any judgment derived from the authority of our ancestors, and applied to existing affairs, must be a judgment pronounced without evidence; and this is the judgment which the fallacy in question calls on us to abide by, to the exclusion of a judgment formed on the completest evidence that the nature of each case may admit.

Causes of the propensity to be influenced by this Fallacy.

Wisdom of ancestors being the most impressive of all arguments that can be employed in defence of established abuses and imperfections, persons interested in this or that particular abuse are most forward to employ it.

But their exertions would be of little avail, were it not for the propensity which they find on the part of their antagonists to attribute to this argument nearly the same weight as those by whom it is relied on.

This propensity may be traced to two intimately-connected causes: 1. Both parties having been trained up alike in the school of the English lawyers, headed by Blackstone; and 2. Their consequent inability, for want of practice, to draw from the principle of general utility the justificative reason of everything that is susceptible of justification.

In the hands of a defender of abuse, authority answers a double purpose, by affording an argument in favour of any particular abuse which may happen to call for protection, and by causing men to regard with a mingled emotion of hatred and terror the principle of general utility, in which alone the true standard and measure of right and wrong is to be found.

In no other department of the field of knowledge and wisdom (unless that which regards religion be an exception) do leading men of the present times recommend to us this receipt for thinking and acting wisely. By no gentleman, honourable or right honourable, are we sent at this time of day to the wisdom of our ancestors for the best mode of marshalling armies, navigating ships, attacking or defending towns; for the best modes of cultivating and improving land, and preparing and preserving its products for the purposes of food, clothing, artificial light and heat; for the promptest and most commodious means of conveyance of ourselves and goods from one portion of the earth's surface to another; for the best modes of curing, alleviating, or preventing disorders in our own bodies, and those of the animals which we contrive to apply to our use.

Why this difference? Only because, in any other part of the field of knowledge, legislation excepted (and religion, in so far as it has been taken for the subject of legislation,) leading men are not affected with that sinister interest which is so unhappily combined with power in the persons of those leading men who conduct governments as they are generally at present established.

Sir H. Davy has never had anything to gain, either from the unnecessary length, the miscarriage, or the unnecessary part of the expenses attendant on chemical experiments; he therefore sends us either to his own experiments, or to those of the most enlightened and fortunate of his contemporaries, and not to the notions of Stahl, Van Helmont, or Paracelsus.

CHAPTER III.

1. *Fallacy of Irrevocable Laws.*
2. *Fallacy of Vows — (ad superstitionem.)*

THE two fallacies brought to view in this chapter are intimately connected, and require to be considered together: the object in view

is the same in both — the difference lies only in the instrument employed; and both of them are in effect the fallacy of *the wisdom of our ancestors*, pushed to the highest degree of extravagance and absurdity.

The object is to tie up the hands of future legislators by obligations supposed to be indissoluble.

In the case of the fallacy derived from the alleged irrevocable nature of certain laws, or, to speak briefly, the fallacy of *Irrevocable laws*, the instrument employed is a contract — a contract entered into by the ruling powers of the state in question, with the ruling powers of some other party. This other party may be either the sovereign of some other state, or the whole or some part of the people of the state in question.

In the case of the fallacy derived from *vows*, a supernatural power is called in and employed in the character of guarantee.

Fallacy of Irrevocable Laws.

Exposition. — A law, no matter to what effect, is proposed to a legislative assembly, and, no matter in what way, it is by the whole or a majority of the assembly regarded as being of a beneficial tendency. The fallacy in question consists in calling upon the assembly to reject it notwithstanding, upon the single ground, that by those who in some former period exercised the power which the present assembly is thus called on to exercise, a regulation was made, having for its object the precluding for ever, or to the end of a period not yet expired, all succeeding legislators from enacting a law to any such effect as that now proposed.

What will be tolerably clear to every man who will allow himself to think it so, is — that, notwithstanding the profound respect we are most of us so ready to testify towards our fellow-creatures as soon as the moment has arrived after which it can be of no use to them, the comforts of those who are out of the way of all the comforts we can bestow, as well as of all the sufferings we can inflict, are not the real objects to which there has been this readiness to sacrifice the comforts of present and future generations, and that therefore there must be some other interest at the bottom.

Exposure. — 1. To consider the matter in the first place on the ground of general utility.

At each point of time, the sovereign for the time possesses such means as the nature of the case affords, for making himself acquainted with the exigencies of his own time.

With relation to the future, the sovereign has no such means of information; it is only by a sort of vague anticipation — a sort of rough and almost random guess drawn by analogy, that the sovereign of this year can pretend to say what will be the exigencies of the country this time ten years.

Here, then, to the extent of the pretended immutable law, is the government transferred from those who possess the best possible means of information, to those who, by their very position, are necessarily incapacitated from knowing anything at all about the matter.

Instead of being guided by their own judgment, the men of the nineteenth century shut their own eyes, and give themselves up to be led blindfold by the men of the eighteenth century.

The men who have the means of knowing the whole body of the facts, on which the correctness and expediency of the judgment to be formed must turn, give up their own judgment to that of a set of men entirely destitute of any of the requisite knowledge of such facts.

Men who have a century more of experience to ground their judgments on, surrender their intellect to men who had a century less experience, and who, unless that deficiency constitutes a claim, have no claim to preference.

If the prior generation were, in respect of intellectual qualification, ever so much superior to the subsequent generation, — if it understood so much better than the subsequent generation itself, the interest of that subsequent generation, — could it have been in an equal degree anxious to promote that interest, and consequently equally attentive to those facts with which, though in order to form a judgment it ought to have been, it is impossible that it should have been acquainted? In a word, will its love for that subsequent generation be quite so great as that same generation's love for itself?

Not even here, after a moment's deliberate reflection, will the assertion be in the affirmative.

And yet it is their prodigious anxiety for the welfare of their posterity that produces the propensity of these sages to tie up the hands of this same posterity for evermore, to act as guardians to its perpetual and incurable weakness, and take its conduct for ever out of its own hands.

If it be right that the conduct of the 19th century should be determined not by its own judgment but by that of the 18th, it will be equally right that the conduct of the 20th century should be determined not by its own judgment but by that of the 19th.

The same principle still pursued, what at length would be the consequence? That in process of time, the practice of legislation would be at an end: the conduct and fate of all men would be determined by those who neither knew nor cared anything about the matter; and the aggregate body of the living

would remain for ever in subjection to an inexorable tyranny, exercised, as it were, by the aggregate body of the dead.

This irrevocable law, whether good or bad at the moment of its enactment, is found at some succeeding period to be productive of mischief — uncompensated mischief — to any amount. Now, of this mischief, what possibility has the country of being rid?

A despotism, though it were that of a Caligula or a Nero, might be to any degree less mischievous, less intolerable, than any such immutable law. By benevolence (for even a tyrant may have his moments of benevolence,) by benevolence, by prudence — in a word, by caprice — the living tyrant might be induced to revoke his law, and release the country from its consequences. But the dead tyrant! who shall make *him* feel? who shall make *him* hear?

Let it not be forgotten, that it is only to a bad purpose that this and every other instrument of deception will in general be employed.

It is only when the law in question is mischievous, and generally felt and understood to be such, that an argument of this stamp will be employed in the support of it.

Suppose the law a good one, it will be supported, not by absurdity and deception, but by reasons drawn from its own excellence.

But is it possible that the restraint of an irrevocable law should be imposed on so many millions of living beings by a few scores, or a few hundreds, whose existence has ceased? — can a system of tyranny be established, under which the living are all slaves, and a few among the dead, their tyrants?

The production of any such effect in the way of constraint being physically impossible, — if produced in any degree, it must be by force of argument — by the force of fallacy, and not by that of legislative power.

The means employed to give effect to this device may be comprised under two heads; the first of them exhibiting a contrivance not less flagitious than the position itself is absurd.

1. In speaking of a law which is considered as repugnant to any law of the pretended immutable class, the way has been to call it void. But to what purpose call it void? Only to excite the people to rebellion in the event of the legislator's passing any such void law. In speaking of a law as void, either this is meant or nothing. It is a sophism of the same cast as that expressed by the words *rights of man*, though played off in another shape, by a different set of hands, and for the benefit of a different class.

Are the people to consider the law void? They are then to consider it as an act of injustice and tyranny under the name of law; — as an act of power exercised by men who have no right to exercise it: they are to deal by it as they would by the command of a robber; they are to deal by those who, having passed it, take upon them to enforce the execution of it, as they would deal, whenever they found themselves strong enough, by the robber himself.*

2. The other contrivance for maintaining the immutability of a given law, is derived from the notion of a contract or engagement. The faithful observance of contracts being one of the most important of the ties that bind society together, an argument drawn from this source cannot fail to have the appearance of plausibility.

But be the parties interested who they may, a contract is not itself an end — it is but a means toward some end; and in cases where the public is one of the parties concerned, it is only in so far as that end consists of the happiness of the whole community, taken in the aggregate, that such contract is worthy to be observed.

Let us examine the various kinds of contract to which statesmen have endeavoured to impart this character of perpetuity: — 1. Treaties between state and foreign state, by which each respectively engages its government and people; 2. Grant of privileges from the sovereign to the whole community in the character of subjects; 3. Grant of privileges from the sovereign to a particular class of subjects; 4. New arrangement of power between different portions or branches of the sovereignty, or new declaration of the rights of the community; 5. Incorporative union between two sovereignties having or not having a common head.

Take, then, for the subject and substance of the contract, any one of these arrangements: so long as the happiness of the whole community, taken in the aggregate, is in a greater degree promoted by the exact observance of the contract, than it would be by any alteration, exact ought to be the observance: — on the contrary, if, by any given change, the aggregate of happiness would be in a greater degree promoted than by the exact observance, such change ought to be made.

True it is, that, considering the alarm and danger which is the natural result of every breach of a contract to which the sovereignty is party, in case of any change with respect to such contract, the aggregate of public happiness will be in general rather diminished than promoted, unless, in case of disadvantage produced to any party by the change, such disadvantage be made up by adequate compensation.

* Lord Coke was for holding void every act contrary to Magna Charta. If his doctrine were tenable, every act imposing law-taxes would be void.

Let it not be said that this doctrine is a dangerous doctrine, because the compensation supposed to be stipulated for as adequate, may prove but a nominal, or at best but an inadequate, compensation. Reality and not pretence, probity not improbity, veracity not mendacity, are supposed alike on all sides; — the contract a real contract, the change a real change, the compensation an adequate as well as real compensation. Instead of probity, suppose improbity in the sovereignty; it will be as easy to deny the existence, or explain away the meaning of the contract, or to deny or explain away the change, as, instead of a real to give a nominal, instead of an adequate to give an inadequate, compensation.

To apply the foregoing principles to the cases above enumerated, one by one: —

1. In the case of the contract or treaty between state and foreign state, the dogma of immutability has seldom been productive of any considerable practical inconvenience: the ground of complaint has arisen rather from a tendency to change than a too rigid adherence to the treaty.

However, some commercial treaties between state and state, entered into in times of political ignorance or error, and pernicious to the general interests of commerce, are frequently upheld under a pretence of regard for the supposed inviolability of such contracts, but in reality from a continuance of the same ignorance, error, antipathy or sinister interest, which first occasioned their existence. It can seldom or never happen that a forced direction thus given to the employment of capital can ultimately prove advantageous to either of the contracting parties; and when the pernicious operation of such a treaty on the interests of both parties has been clearly pointed out, there can be no longer any pretence for continuing its existence. Notice, however, of any proposed departure from the treaty, ought to be given to all the parties concerned; sufficient time should be afforded to individuals engaged in traffic, under the faith of the treaty, to withdraw, if they please, their capitals from such traffic, and in case of loss, compensation as far as possible ought to be afforded.

2. Grant of privilege from the sovereign to the whole community in the character of subjects.—If, by the supposed change, privileges to equal value be given in the room of such as are abrogated, adequate compensation is made: if greater privileges are substituted, there is the greater reason for supporting the measure.

3. Grant of privileges from the sovereign to a particular class of subjects.

No such particular privilege ought to have been granted, if the aggregate happiness of the community was likely to be thereby diminished: but, unless in case of a revocation, adequate compensation be here also made, the aggregate happiness of the community will not be increased by the change; the happiness of the portion of the community to be affected by the change, being as great a part of the aggregate happiness as that of any other portion of equal extent.

Under this head are included all those more particular cases in which the sovereign contracts with this or that individual, or assemblage of individuals, for money or money's worth, to be supplied, or service otherwise to be rendered.

4. New arrangement or distribution of powers, as between different portions or branches of the sovereignty, or new declaration of the rights of the community.

Let the supposition be, that the result will not be productive of a real addition to the aggregate stock of happiness on the part of the whole community, — it ought not to be made: let the supposition be the reverse, — then, notwithstanding the existence of the contract, the change is such as it is right and fitting should be made.

The first of these can never furnish a case for compensation, unless in so far as, without charge or disadvantage to the people, the members of the sovereignty can contrive to satisfy one another; such members of the sovereignty being, as to the rest of the community, not proprietors but trustees.

The frame or constitution of the several American United States, so far from being declared immutable or imprescriptible, contains an express provision, that a convention shall be holden at intervals for the avowed object of revising and improving the constitution, as the exigencies of succeeding times may require. In Europe, the effect of declaring this or that article in a new distribution of powers, or in the original frame of a constitution, immutable, has been to weaken the sanction of all laws. The article in question turns out to be mischievous or impracticable; instead of being repealed, it is openly or covertly violated; and this violation affords a precedent or pretext for the non-observance of arrangements clearly calculated to promote the aggregate happiness of the community.

5. Case of an incorporative union between two sovereignties, having or not having a common head.

Of all the cases upon the list, this is the only one which is attended with difficulty.

This is the case in which, at the same time that a contract with detailed clauses is at once likely and fit to be insisted on, compensation, that compensation without which any change would not be consistent with general utility in the shape of justice or in any other shape, is an operation attended with more difficulty than in any other of these cases.

Distressing indeed would be the difficulty,

were it not for one circumstance which happily is interwoven in the very nature of the case.

At the time of the intended union, the two states (not to embarrass the case by taking more than two at a time) are, with relation each to the other, in a greater or less degree foreign and independent states.

Of the two uniting states, one will generally be more, the other less, powerful. If the inequality be considerable, the more powerful state, naturally speaking, will not consent to the union, unless, after the union, the share it possesses in the government of the new-framed compound state be greater by a difference bearing some proportion to the difference in prosperity between the two states.

On the part of the less powerful state, precautions against oppression come of course.

Wherever a multitude of human beings are brought together, there is but too much room for jealousy, suspicion, and mutual ill-will.

In the apprehension of each, the others, if they obtain possession of the powers exercised by the common government, will be supposed to apply them unjustly. In men or in money, in labour or in goods, in a direct way or in some indirect one, it may be the study of the new compound government, under the influence of that part of the quondam government which is predominant in it, to render the pressure of the contributions proportionably more severe upon the one portion of the new compounded state than upon the other, or to force upon it new customs, new religious ceremonies, new laws.

Let the hands of the new government remain altogether loose: one of the two compound nations may be injured and oppressed by the other.

Tie up the hands of the government in such degree as is requisite to give to each nation a security against injustice at the hands of the other: sooner or later comes the time in which the inconveniences resulting from the restriction will become intolerable to one or other, or to both.

But sooner or later the very duration of the union produces the natural remedy.

Sooner or later, having for such or such a length of time been in the habit of acting in subjection to one government, the two nations will have become melted into one, and mutual apprehensions will have been dissipated by conjunct experience.

All this while, in one or both of the united states, the individuals will be but too numerous and too powerful, who by sinister interest and interest-begotten prejudice will stand engaged to give every possible countenance and intensity to those fears and jealousies — to oppose to the entire composure of them every degree of retardation.

If in either of the united communities, at the time of the union, there existed a set of men more or less numerous and powerful, to whom abuse or imperfection in any shape was a source of profit; whatsoever restrictions may have been expressed in the contract, these restrictions will of course be laid hold of by the men thus circumstanced, and applied as far as possible to the giving protection and continuance to a state of things agreeable or beneficial to themselves.

At the time of the union between England and Scotland, the Tory party, of whom a large proportion were Jacobites, and all or most of them high-churchmen, had acquired an ascendant in the House of Commons.

Here, then, a favourable occasion presented itself to these partisans of Episcopacy, for giving perpetuity to the triumph they had obtained over the English Presbyterians, by the Act of Uniformity proclaimed in the time of Charles the Second.*

In treaties between unconnected nations, where an advantage in substance is given to one, for the purpose of saving the honour of the other, it has been the custom to make the articles bear the appearance of reciprocity upon the face of them; as if, the facilitating the vent of French wines in England being the object of a treaty, provision were made in it that wine of the growth of either country might be imported into the other, duty free.

By the combined *astutia* of priestcraft and lawyercraft, advantage was taken of this custom to rivet for ever those chains of ecclesiastical tyranny which, in the precipitation that attended the restoration, had been fastened upon the people of England. For securing the 45 Scotch members from being outnumbered by the 513 English ones, provision had been made in favour of the church of Scotland: therefore, on the principle of reciprocity, for securing the 513 English members from being outnumbered by the 45 Scotch ones, like provision was made in favour of the church of England.

Blackstone avails himself of this transaction for giving perpetuity to whatever imperfections may be founded in the ecclesiastical branch of the law, and the official establishment of England.

On a general account which he has been giving,† of the articles and act of union, he grounds three observations: —

1. "That the two kingdoms are now so inseparably united, that nothing can ever disunite them again, except the mutual consent of both, or the successful resistance of either, upon apprehending an infringement of those points which, when they were separate and independent nations, it was mutually stipulated should be "fundamental and essential conditions" of the union.

* 13 & 14 Ch. II. c. 4. † Vol. I. 97, 98.

2. "That, whatever else may be deemed "fundamental and essential conditions," the preservation of the two churches of England and Scotland, in the same state that they were in at the time of the union, and the maintenance of the acts of uniformity which establish our common prayer, are expressly declared so to be.

3. "That therefore any alteration in the constitution of either of those churches, or in the liturgy of the church of England (unless with the consent of the respective churches collectively or representatively given,) would be an infringement of these "fundamental and essential conditions," and greatly endanger the union."

On the original device, an improvement has, we see, been made by the ingenuity of the orthodox and learned commentator. If —as for example, by the alteration of any of the 39 articles—if, by the abolition of any of the English ecclesiastical sinecures, or by any efficient measure for ensuring the performance of duty in return for salary, the ecclesiastical branch of the English official establishment were brought so much the nearer to what it is in Scotland, the Scotch, fired by the injury done to them, would cry out, A breach of faith! and call for a dissolution of the union.

To obviate this *danger*—a *great* one he denominates it—his ingenuity, in concert with his piety, has however furnished us with an expedient:—"The consent of the church, collectively or representatively given," is to be taken; by which is meant, if anything, that by the revival of the convocation, or some other means, the clergy of England are to be erected into a fourth estate.

What is evident is, that unless the sinister influence of the Crown could be supposed to become *felo de se*, and employ itself in destroying a large portion of itself, nothing but a sincere persuasion of the utility of a change in relation to any of the points in question, and that entertained by a large proportion of the English members in each House, could ever be productive of any such change;—that, in any attempt to force the discipline of the church of Scotland upon the church of England, the 45 Scotch members in the House of Commons, supposing them all unanimous, would have to outnumber, or somehow or other to subdue, the 513 English ones;—that in the House of Lords, the 16 Scotch members, supposing all the lay lords indifferent to the fate of the church of England, would in like manner have to outnumber the 26 bishops and archbishops.

But the Tories, who were then in vigour, feared that they might not always be so, and seized that opportunity to fetter posterity by an act which should be deemed irrevocable.

The "administration of justice in Scotland."* This forms the subject of the 19th article, which has for its *avowed* object the securing the people of Scotland against any such encroachments as might otherwise be made by the lawyers of England, by the use of those fictions and other frauds, in the use of which they had been found so expert. But throughout the whole course of this long article, the most rational and uniform care is taken to avoid all such danger as that of depriving the people of Scotland of such benefit as, from time to time, they might stand a chance of receiving at the hands of the united parliament, by improvements in the mode of administering justice: "subject to such regulations as shall be made by the parliament of Great Britain," is a clause over and over again repeated.

It would have been better for Scotland, if on the subject of the next article, viz. "heritable offices," including "heritable jurisdictions," the like wisdom had presided. By that short article, those public trusts, together, with others therein mentioned, are, on the footing of "rights of property," reserved to the owners; yet still without any expression of that fanatic spirit which, on the field of religion, had in the same statute occupied itself in the endeavour to invest the conceits of mortal man with the attribute of immortality.

Nine-and-thirty years after, came the act† for abolishing these same heritable jurisdictions. Here was an act made in the very teeth of the act of union.

Mark now the sort of discernment, or of sincerity, that is to be learnt from Blackstone.

In a point-blank violation of the articles of union, in the abolition of those heritable jurisdictions which it was the declared object of one of its articles (20) to preserve, he saw nothing to "*endanger the union.*"

But suppose any such opinion to prevail, as that it is not exactly true, that by the mere act of being born, every human being merits *damnation*‡ (if by damnation be meant everlasting torment, or punishment in any other shape,) and a corresponding alteration were made in the set of propositions called the thirty-nine articles, the union would be "greatly endangered."

Between twenty and thirty years afterwards, at the suggestion of an honest member of the Court of Session, came upon the carpet, for the first time, the idea of applying remedies to some of the most flagrant imperfections in the administration of Scottish justice; and thereupon came out a pamphlet from James

* 5 Ann, c. 8. art. 19, anno 1708.

† "Abolishing the heritable jurisdictions in Scotland" are so many words that stand in the title of it. Anno 1747, 20 Geo. II. c. 43.

‡ Art. 9.

Boswell, declaiming, in the style of school-boy declamation, on the injury that would be done to the people of Scotland by rendering justice, or what goes by that name, a little less inaccessible to them, and the breach that would be made in the faith plighted by that treaty, which, to judge from what he says of it, he had never looked at.

Again, in 1806, when another demonstration was made of applying a remedy to the abuses and imperfections of the system of judicature in Scotland, everything that could be done in that way was immediately reprobated by the Scotch lawyers as an infringement of that most sacred of all sacred bonds — the union: nor, for the support of the brotherhood on the other side of the Tweed, was a second sight of the matter in the same point of view wanting in England.

As to any such design as that of oppressing their fellow-subjects in Scotland, nothing could be further from the thoughts of the English members; neither for good nor for evil uses, was any expense of thought bestowed upon the matter: the ultimate object, as it soon became manifest, was the adding an item or two to the list of places.

Upon the whole, the following is the conclusion that seems to be dictated by the foregoing considerations. Every arrangement by which the hands of the sovereignty for the time being are attempted to be tied up, and precluded from giving existence to a fresh arrangement, is absurd and mischievous; and, on the supposition that the utility of such fresh arrangement is sufficiently established, the existence of a prohibitive clause to the effect in question ought not to be considered as opposing any bar to the establishment of it.

True it is, that all laws, all political institutions, are essentially dispositions for the future; and the professed object of them is, to afford a steady and permanent security to the interests of mankind. In this sense, all of them may be said to be framed with a view to perpetuity; but *perpetual* is not synonymous with *irrevocable;* and the principle on which all laws ought to be, and the greater part of them have been, established, is that of *defeasible perpetuity;* a perpetuity defeasible only by an alteration of the circumstances and reasons on which the law is founded.

To comprise all in one word — reason, and that alone, is the proper anchor for a law, for everything that goes by the name of law. At the time of passing his law, let the legislator deliver, in the character of reasons, the considerations by which he was led to the passing of it.*

This done, so long as in the eyes of the succeeding legislators the state of facts on which the reasons are grounded appears to continue without material change, and the reasons to appear satisfactory, so long the law continues: but no sooner do the reasons cease to appear satisfactory, or the state of the facts to have undergone any such change as to call for an alteration in the law, than an alteration in it, or the abrogation of it, takes place accordingly.

A declaration or assertion that this or that law is immutable, so far from being a proper instrument to insure its permanency, is rather a presumption that such law has some mischievous tendency.

The better the law, the less is any such extraneous argument likely to be recurred to for the support of it; the worse the law, and thence the more completely destitute of all intrinsic support, the more likely is it that support should be sought for it from this extraneous source.

But though it is the characteristic tendency of this instrument to apply itself to bad laws in preference to good ones, there is another, the tendency of which is to apply itself to good ones in preference to bad: this is what may be termed justification; the practice of annexing to each law the considerations by which, in the character of *reasons*, the legislator was induced to adopt it;† a practice which, if rigidly pursued, must at no distant interval put an exclusion on all bad laws.

To the framing of laws, so constituted, that, being good in themselves, an accompaniment of good and sufficient reasons should also be given for them, there would be requisite, in the legislator, a probity not to be diverted by the action of sinister interest, and intelligence adequate to an enlarged comprehension and close application of the principle of general utility: in other words, the principle of the greatest happiness of the greatest number.

But to draw up laws without reasons, and laws for which good reasons are not in the nature of the case to be found, requires no more than the union of will and power.

The man who should produce a body of good laws with an accompaniment of good reasons, would feel an honest pride at the prospect of holding thus in bondage a succession of willing generations: his triumph would be to leave them the power, but to deprive them of will, to escape. But to the champions of abuse, by whom, amongst other devices, the conceit of immutable laws is played off against reform, in whatever shape it presents itself, every use of reason is as

* For a specimen, see *Essay on the Promulgation of Laws*, Vol. I. p. 155, *et seq.*

† See Vol. I. p. 155, *et seq.*; and *Papers on Codification, and Letters to the United States*, in Vol. IV.

odious as the light of the sun to moles and burglars.

2. *Vows or Promissory Oaths.*

The object in this fallacy is the same as in the preceding: but to the absurdity involved in the notion of tying up the hands of generations yet to come, is added, in this case, that which consists in the use sought to be made of supernatural power: the arm pressed into the service is that of the invisible and supreme ruler of the universe.

The oath taken, the formularies involved in it being pronounced,—is or is not the Almighty bound to do what is expected of him? Of the two contradictory propositions, which is it that you believe?

If he is *not* bound, then the security, the sanction, the obligation, amounts to nothing.

If he *is* bound, then observe the consequence:—the Almighty is bound; and by whom bound? Of all the worms that crawl about the earth in the shape of men, there is not one who may not thus impose conditions on the supreme ruler of the universe.

And to what is he bound? To any number of contradictory and incompatible observances which legislators, tyrants, or madmen, may, in the shape of an oath, be pleased to assign.

Eventual, it must be acknowledged, and no more, is the power thus exercised over, the task thus imposed upon, the Almighty. So long as the vow is kept, there is nothing for him to do. True: but no sooner is the vow broken, than his task commences—a task which consists in the inflicting on him by whom the vow is broken, a punishment which, when it is inflicted, is of no use in the way of example, since nobody ever sees it.

The punishment, it may be said, when inflicted, will be such exactly, as in the judgment of the almighty and infallible judge, will be best adapted to the nature of the offence.

Yes: but what offence? Not the act which the oath was intended to prevent, for that act may be indifferent, or even meritorious; and, if criminal, ought to be punished independently of the oath: the only offence peculiar to this case, is the profanation of a ceremony; and the profanation is the same, whether the act by which the profanation arises be pernicious or beneficial.

It is in vain to urge, in this or that particular instance, in proof of the reasonableness of the oath, the reasonableness of the prohibition or command which it is thus employed to perpetuate.

The objection is to the principle itself: to any idea of employing an instrument so unfit to be employed.

No sort of security is given, or can be given, for the applying it to the most beneficial purpose, rather than to the most pernicious.

On the contrary, it is more likely to be applied to a pernicious than to a beneficial purpose;

Because, the more manifestly and undeniably beneficial the observance of the prohibition in question would be in the eyes of future generations, the more likely is the prohibition to be observed, independently of the oath: as, on the other hand, the more likely the prohibition is not to be observed otherwise, the greater is the demand for a security of this extraordinary complexion to enforce the observance.

We come now to the instance in which, by the operation of the fallacy here in question, the ceremony of an oath has been endeavoured to be applied to the perpetuation of misrule.

Among the statutes passed in the first parliament of William and Mary, is one entitled "An Act for establishing the Coronation Oath."*

The form in which the ceremony is performed is as follows:—By the archbishop or bishop, certain questions are put to the monarch; and it is of the answers given to these questions that the oath is composed.

Of these questions, the third is as follows:—"Will you, to the utmost of your power, maintain the laws of God, the true profession of the Gospel, and the protestant reformed religion established by law? And will you preserve unto the bishops and clergy of this realm, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them, or any of them?"

Answer: "All this I promise to do."

After this, anno 1706, comes the Act of Union, in the concluding article of which it is said, "That after the demise of her Majesty . . . . the sovereign next succeeding to her Majesty in the royal government of the kingdom of Great Britain, and so for ever hereafter, every king or queen succeeding and coming to the royal government of the kingdom of Great Britain, at his or her coronation, shall in the presence," &c. "take and subscribe an oath to maintain and preserve inviolably the said settlement of the church, and the doctrine, worship, discipline and government thereof, as by law established, within the kingdoms of England and Ireland, the dominion of Wales, and town of Berwick-upon-Tweed, and the territories thereunto belonging."†

A notion was once started, and upon occasion may but too probably be broached again, that by the above clause in the coronation oath, the king stands precluded from joining in the putting the majority of the Irish upon

* 1 W. & M. c. 6, anno 1688.
† 5 Ann, c. 8, art. 25, § 8.

an equal footing with the minority, as well as from affording to both together relief against the abuses of the ecclesiastical establishment of that country.

In relation to this notion, the following propositions have already, it is hoped, been put sufficiently out of doubt: —

1. That it ought not to be in the power of the sovereignty to tie up its own hands, or the hands of its successors.

2. That, on the part of the sovereignty, no such power can have existence, either here or anywhere else.

3. That, therefore, all attempts to exercise any such power are, in their own nature, to use the technical language of lawyers, null and void.

4. Another, which will, it is supposed, appear scarcely less clear, is, that no such anarchical wish or expectation was entertained by the framers of the oath.

The proposition maintained is, that to any bills, to the effect in question, the monarch is, by this third and last clause in the oath, precluded from giving his assent: if so, he is equally precluded from giving his assent to any bills, to any proposed laws whatever.

It is plainly in what is called his executive, and not in his legislative capacity, that the obligation in question was meant to attach upon the monarch.

So loose are the words of the act, that if they were deemed to apply to the monarch in his legislative capacity, he might find in them a pretence for refusing assent to almost anything he did not like.

If by this third clause he stands precluded from consenting to any bill, the effect of which would be to abolish or vary any of the "rights" or "privileges" appertaining to the bishops or clergy, or "any of them," then by the first clause he stands equally precluded from giving his concurrence to any law, the effect of which would be to abolish or change any other rights. For by this first clause he is made "solemnly" to "promise and swear to govern the people . . . . according to the statutes in parliament agreed on, and the laws and customs of the same." After this, governing according to any new law, he could not govern according to the old law abrogated by it.

If, by any such ceremony, misrule in this shape could be converted into a duty or a right, so might it in any other.

If Henry VIII. at his coronation had sworn to "maintain" that Catholic "religion," which for so many centuries was "established by law," and by fire and sword to keep out the Protestant religion, and had been considered bound by such oath, he could never have taken one step towards the Reformation, and the religion of the state must have been still Catholic.

But would you put a force upon the conscience of your sovereign? By any construction, which in your judgment may be the proper one, would you preclude him from the free exercise of his?

Most assuredly not — even were it as completely within as it is out of my power.

All I plead for is, that on so easy a condition as that of pronouncing the word *conscience*, it may not be in his power either to make himself absolute, or in any shape to give continuance to misrule.

Let him but resign his power, conscience can never reproach him with any misuse of it.

It seems difficult to say what can be a misuse of it, if it be not a determinate and persevering habit of using it in such a manner as in the judgment of the two houses is not "conducive," but repugnant "to the utility of the subjects," with reference to whom, and whose utility alone, either laws or kings can be of any use.

According to the form in which it is conceived, any such engagement is in effect either a check or a licence: — a licence under the appearance of a check, and for that very reason but the more efficiently operative.

Chains to the man in power? Yes: but such as he figures with on the stage — to the spectators as imposing, to himself as light as possible. Modelled by the wearer to suit his own purposes, they serve to rattle, but not to restrain.

Suppose a king of Great Britain and Ireland to have expressed his fixed determination, in the event of any proposed law being tendered to him for his assent, to refuse such assent, and this not on the persuasion that the law would not be "for the utility of the subjects," but that by his coronation oath he stands precluded from so doing, — the course proper to be taken by parliament, the course pointed out by principle and precedent would be, a vote of abdication — a vote declaring the king to have abdicated his royal authority, and that, as in case of death or incurable mental derangement, now is the time for the person next in succession to take his place.

In the celebrated case in which a vote to this effect was actually passed, the declaration of abdication was in lawyer's language a fiction, — in plain truth a falsehood, — and that falsehood a mockery; not a particle of his power was it the wish of James to abdicate, to part with; but to increase it to a maximum, was the manifest object of all his efforts.

But in the case here supposed, with respect to a part, and that a principal part, of the royal authority, the will and purpose to abdicate is actually declared: and this, be such a part, without which the remai cannot, "to the utility of the subjects,

exercised, the remainder must of necessity be, on their part and for their sake, added.*

CHAPTER IV.

NO-PRECEDENT ARGUMENT — (*ad verecundiam.*)

Exposition. — "The proposition is of a novel and unprecedented complexion: the present is surely the first time that any such thing was ever heard of in this house."

Whatsoever may happen to be the *subject* introduced, above is a specimen of the infinite variety of forms in which the opposing *predicate* may be clothed.

To such an observation there could be no objection, if the object with which it were made was only to fix attention to a new or difficult subject: "Deliberate well before you act, as you have no precedent to direct your course."

Exposure. — But in the character of an argument, as a ground for the rejection of the proposed measure, it is obviously a fallacy.

Whether or no the alleged novelty actually exists, is an inquiry which it can never be worth while to make.

That it is impossible that it should in any case afford the smallest ground for the rejection of the measure, — that the observation is completely irrelevant in relation to the question, whether or no it is expedient that such a measure should be adopted, — is a proposition to which it seems difficult to conceive how an immediate assent can be refused. If no specific good is indicated as likely to be produced by the proposed measure, this deficiency is itself sufficient to warrant the rejection of it. If any such specific good is indicated, it must be minute indeed, if an observation of this nature can afford a sufficient ground for the rejection of the measure.

If the observation presents a conclusive objection against the particular measure proposed, so it would against any other that ever was proposed, including every measure that ever was adopted, and therein every institution that exists at present. If it proves that this ought not to be done, it proves that nothing else ought ever to have been done.

It may be urged, that if the measure had been a fit one, it would have been brought upon the carpet before. But there are several obstacles, besides the inexpediency of a measure, which, for any length of time, may prevent its being brought forward: —

1. If, though beyond dispute promotive of the interest of the many, there be anything in it that is adverse to the interests, the prejudices, or the humours of the ruling few, the wonder is, not that it should not have been brought forward before, but that it should be brought forward even now.

2. If in the complexion of it there be anything which it required a particular degree of ingenuity to contrive and adapt to the purpose, this would of itself be sufficient to account for the tardiness of its appearance.

In legislation, the birth of ingenuity is obstructed and retarded by difficulties beyond any which exist in other matters. Besides the more general sinister interest of the powerful few in whose hands the functions of government are lodged, the more particular sinister interest affecting the body of lawyers, is one to which any given measure, in proportion to the ingenuity displayed in it, is likely to be adverse.

Measures which come under the head of

---

* The variety of the notions entertained at different periods, in different stages of society, respecting the duration of laws, presents a curious and not uninstructive picture of human weakness.

1. At one time we see, under the name of king, a single person, whose will makes law, or at any rate, without whose will no law is made; and when this lawgiver dies, his laws die with him.

Such was the state of things in Saxon times, — such even continued to be the state of things for several reigns after the Norman conquest.[a]

2. Next to this comes a period in which the duration of the law, during the lifetime of the monarch to whom it owed its birth, was unsettled and left to chance.[b]

3. In the third place comes the period in which the notions respecting the duration of the law concur with the dictates of reason and utility—not so much from reflection, as because no occasion of a nature to suggest and urge any attempt so absurd as that of tyrannizing over futurity, had as yet happened to present itself.

4. Lastly, upon the spur of an occasion of the sort in question, comes the attempt to give eternity to human laws.

Provisional and eventual perpetuity is an attribute which, in that stage of society at which laws have ceased to expire with the individual legislator, is understood to be inherent in all laws in which no expression is found to the contrary.

But if a particular length of time be marked out, during which, in the enactment of a law, it is declared that that law shall not be liable to suffer abrogation or alteration, the determination to tie up the hands of succeeding legislators is expressed in unequivocal terms.

Such, in respect of their constitutional code, was the pretension set up by the first assembly of legislators brought together by the French revolution.

A position not less absurd in principle, but, by the limitation in point of time, not pregnant with anything like equal mischief, was before that time acted upon, and still continues to be acted upon, in English legislation.

In various statutes, a clause may be found by which the statute is declared capable of being altered or repealed in the course of the same session. In this clause is contained, in the way of necessary implication, that a statute in which no such clause is inserted is not capable of being repealed or altered during the session, — no, not by the very hands by which it was made.

[a] To Ric. I. inclusive. [b] John, Ed. I. and II.

indirect legislation, and in particular those which have the quality of executing themselves, are the measures which, as they possess most efficiency when established, so they require greater ingenuity in the contrivance. Now, in proportion as laws execute themselves — in other words, are attended with voluntary obedience — in that proportion are they efficient; but it is only in proportion as they fail of being efficient, that to the man of law they are beneficial and productive; because it is only in proportion as they stand in need of enforcement, that business makes its way into the hands of the man of law.

CHAPTER V.

1. *Self-assumed Authority—(ad ignorantiam; ad verecundiam.)*

2. *The Self-trumpeter's fallacy.*

THIS fallacy presents itself in two shapes: — 1. An avowal made with a sort of mock modesty and caution by a person in exalted station, that he is incapable of forming a judgment on the question in debate, such incapacity being sometimes real, sometimes pretended; 2. Open assertion, by a person so situated, of the purity of his motives and integrity of his life, and the entire reliance which may consequently be reposed on all he says or does.

I. The first is commonly played off as follows: — An evil or defect in our institutions is pointed out clearly, and a remedy proposed, to which no objection can be made; up starts a man high in office, and, instead of stating any specific objection, says, "I am not prepared" to do so and so, "I am not prepared to say," &c. The meaning evidently intended to be conveyed is, "If I, who am so dignified, and supposed to be so capable of forming a judgment, avow myself incompetent to do so, what presumption, what folly, must there be in the conclusion formed by any one else!" In truth, this is nothing else but an indirect way of browbeating — arrogance under a thin veil of modesty.

If you are not prepared to pass a judgment, you are not prepared to condemn, and ought not, therefore, to oppose: the utmost you are warranted in doing, if sincere, is to ask for a little time for consideration.

Supposing the unpreparedness real, the reasonable and practical inference is — say nothing, take no part in the business.

A proposition for the reforming of this or that abuse in the administration of justice, is the common occasion for the employment of this fallacy.

In virtue of his office, every judge, every law-officer, is supposed and pronounced to be profoundly versed in the science of the law.

Yes; of the science of the law as it is, probably as much as any other man: but law as it ought to be, is a very different thing; and the proposal in question has for its avowed, and commonly for its real object, the bringing law as it is, somewhat nearer to law as it ought to be. But this is one of those things for which the great dignitary is sure to be at all times unprepared, — unprepared to join in any such design, everything of this sort, having been at all times contrary to his interest, — unprepared so much as to form any judgment concerning the conduciveness of the proposed measure to such its declared object: in any such point of view it has never been his interest to consider it.

A mind that, from its first entrance upon this subject, has been applying its whole force to the inquiry as to what are the most effectual means of making its profit of the imperfections of the system, — a mind to which, of consequence, the profit from these sources of affliction has been all along an object of complacency, and the affliction itself, at best, but an object of indifference, — a mind which has, throughout the whole course of its career, been receiving a correspondent bias, and has in consequence contracted a correspondent distortion, — cannot with reason be expected to exert itself with much alacrity or facility in a track so opposite and so new.

For the quiet of his conscience, if, at the outset of his career, it were his fortune to have one, he will naturally have been feeding himself with the notion, that if there be anything that is amiss, in practice it cannot be otherwise; which being granted, and, accordingly, that suffering to a certain amount cannot but take place, whatsoever profit can be extracted from it, is fair game, and as such belongs of right to the first occupant among persons duly qualified.

The wonder would not be great if an officer of the military profession should exhibit, for a time at least, some awkwardness if forced to act in the character of a surgeon's mate: to inflict wounds requires one sort of skill — to dress and heal them requires another. Telephus is the only man upon record who possessed an instrument by which wounds were with equal dispatch and efficiency made and healed. The race of Telephus is extinct; and as to his spears, if ever any of them found their way into Pompeii or Herculaneum, they remain still among the ruins.

Unfortunately, in this case, were the ability to form a judgment ever so complete, the likelihood of co-operation would not be increased. None are so completely deaf as those who will not hear — none are so completely unintelligent as those who will not understand.

Call upon a chief-justice to concur in a measure for giving possibility to the recovery of a debt, — the recovery of which is in his own

court rendered impossible by costs which partly go into his own pocket,—as well might you call upon the Pope to abjure the errors of the church of Rome. If not hard pressed, he will maintain a prudent and easy silence; if hard pressed, he will let fly a volley of fallacies — he will play off the argument drawn from the imputation of bad motives, and tell you of the profit expected by the party by whom the bill was framed, and petition procured, to form a ground for it. If that be not sufficient, he will transform himself in the first place into a witness giving evidence upon a committee; in the next place, after multiplying himself into the number of members necessary to hear and report upon that evidence, he will make a report accordingly.

He will report in that character, that when in any town a set of tradesmen have, on their petition, obtained a judicatory in which the recovery of a debt under 40s. or £5 is not attended with that obstruction of accumulated expense by which the relief which his judicatory professes to afford is always accompanied, it has been with no other effect than that of giving in the character of judges effect to claims which in the character of witnesses it was originally their design, and afterwards their practice, to give support to by perjury.

II. The second of these two devices may be called the self-trumpeter's fallacy.

By this name it is not intended to designate those occasional impulses of vanity which lead a man to display or overrate his pretensions to superior intelligence. Against the self-love of the man whose altar to himself is raised on this ground, rival altars, from every one of which he is sure of discouragement, raise themselves all around.

But there are certain men in office, who in discharge of their functions arrogate to themselves a degree of probity which is to exclude all imputations and all inquiry; their assertions are to be deemed equivalent to proof; their virtues are guarantees for the faithful discharge of their duties; and the most implicit confidence is to be reposed in them on all occasions. If you expose any abuse, propose any reform, call for securities, inquiry, or measures to promote publicity, they set up a cry of surprise, amounting almost to indignation, as if their integrity were questioned, or their honour wounded. With all this, they dexterously mix up intimations that the most exalted patriotism, honour, and perhaps religion, are the only sources of all their actions.

Such assertions must be classed among fallacies, because — 1. They are irrelevant to the subject in discussion; 2. The degree in which the predominance of motives of the social or disinterested cast is commonly asserted or insinuated, is, by the very nature of man, rendered impossible; 3. The sort of testimony thus given affords no legitimate reason for regarding the assertion in question to be true; for it is no less completely in the power of the most profligate than in that of the most virtuous of mankind; nor is it in a less degree the interest of the profligate man to make such assertions. Be they ever so completely false, not any the least danger of punishment does he see himself exposed to, at the hands either of the law or of public opinion.

For ascribing to any one of these self-trumpeters the smallest possible particle of that virtue which they are so loud in the profession of, there is no more rational cause, than for looking upon this or that actor as a good man, because he acts well the part of Othello, or bad, because he acts well the part of Iago.

4. On the contrary, the interest he has in trying what may be done by these means, is more decided and exclusive than in the case of the man of real probity and social feeling. The virtuous man, being what he is, has that chance for being looked upon as such; whereas the self-trumpeter in question, having no such ground of reliance, beholds his only chance in the conjunct effect of his own effrontery, and the imbecility of his hearers.

These assertions of authority, therefore, by men in office, who would have us estimate their conduct by their character, and not their character by their conduct, must be classed among political fallacies. If there be any one maxim in politics more certain than another, it is, that no possible degree of virtue in the governor can render it expedient for the governed to dispense with good laws and good institutions.*

CHAPTER VI.

LAUDATORY PERSONALITIES—*(ad amicitiam.)*

PERSONALITIES of this class are the opposites, and in some respects the counterparts, of vituperative personalities, which will be treated of next in order, at the commencement of the ensuing Book.

Laudatory personalities are susceptible of the same number of modifications as will be shown to exist in the case of vituperative personalities: but in this case the argument is so

* Madame de Staël says, that in a conversation which she had at Petersburgh with the Emperor of Russia, he expressed his desire to better the condition of the peasantry, who are still in a state of absolute slavery; upon which the female sentimentalist exclaimed, "Sire, your character is a constitution for your country, and your conscience is its guarantee." His reply was, "*Quand cela serait, je ne serais jamais* qu'un accident heureux." — *Dix années d'Exil*, p. 313.

much weaker than in the other, that the shades and modifications of it are seldom resorted to, and are therefore not worth a detailed exposition. The object of vituperative personalities is to effect the rejection of a measure, on account of the alleged bad character of those who promote it; and the argument advanced is — "The persons who propose or promote the measure, are bad; therefore the measure is bad, or ought to be rejected." The object of laudatory personalities is to effect the rejection of a measure on account of the alleged good character of those who oppose it; and the argument advanced is — "The measure is rendered unnecessary by the virtues of those who are in power; their opposition is a sufficient authority for the rejection of the measure."

The argument indeed is generally confined to persons of this description, and is little else than an extension of the self-trumpeter's fallacy. In both of them, authority derived from the virtues or talents of the persons lauded, is brought forward as superseding the necessity of all investigation.

"The measure proposed implies a distrust of the members of his Majesty's government; but so great is their integrity, so complete their disinterestedness, so uniformly do they prefer the public advantage to their own, that such a measure is altogether unnecessary: — their disapproval is sufficient to warrant an opposition: precautions can only be requisite where danger is apprehended; here, the high character of the individuals in question is a sufficient guarantee against any ground of alarm."

The panegyric goes on increasing in proportion to the dignity of the functionary thus panegyrized.

Subordinates in office are the very models of assiduity, attention, and fidelity to their trust; ministers, the perfection of probity and intelligence: and as for the highest magistrate in the state, no adulation is equal to describe the extent of his various merits.

There can be no difficulty in exposing the fallacy of the argument attempted to be deduced from these panegyrics: —

1. They have the common character of being irrelevant to the question under discussion. The measure must have something extraordinary in it, if a right judgment cannot be founded on its merits, without first estimating the character of the members of the government.

2. If the goodness of the measure be sufficiently established by direct arguments, the reception given to it by those who oppose it will form a better criterion for judging of their character, than their character (as inferred from the places which they occupy) for judging of the goodness or badness of the measure.

3. If this argument be good in any one case, it is equally good in every other; and the effect of it, if admitted, would be to give to the persons occupying for the time being the situation in question, an absolute and universal negative upon every measure not agreeable to their inclinations.

4. In every public trust, the legislator should, for the purpose of prevention, suppose the trustee disposed to break the trust in every imaginable way in which it would be possible for him to reap, from the breach of it, any personal advantage. This is the principle on which public institutions ought to be formed; and when it is applied to all men indiscriminately, it is injurious to none. The practical inference is, to oppose to such possible (and what will always be probable) breaches of trust every bar that can be opposed, consistently with the power requisite for the efficient and due discharge of the trust. Indeed, these arguments, drawn from the supposed virtues of men in power, are opposed to the first principles on which all laws proceed.

5. Such allegations of individual virtue are never supported by specific proof — are scarce ever susceptible of specific disproof; and specific disproof, if offered, could not be admitted, viz. in either House of Parliament. If attempted elsewhere, the punishment would fall, not on the unworthy trustee, but on him by whom the unworthiness had been proved.

PART II. FALLACIES OF DANGER,

THE SUBJECT-MATTER OF WHICH IS DANGER IN VARIOUS SHAPES, AND THE OBJECT TO REPRESS DISCUSSION ALTOGETHER, BY EXCITING ALARM.

CHAPTER I.

VITUPERATIVE PERSONALITIES — *(ad odium.)*

To this class belongs a cluster of fallacies so intimately connected with each other, that they may first be enumerated, and some observations be made upon them in the lump. By seeing their mutual relations to each other — by observing in what circumstances they agree, and in what they differ — a much more

correct as well as complete view will be obtained of them, than if they were considered each of them by itself.

The fallacies that belong to this cluster may be denominated —

1. Imputation of bad design.
2. Imputation of bad character.
3. Imputation of bad motive.
4. Imputation of inconsistency.
5. Imputation of suspicious connexions — *Noscitur ex sociis.*
6. Imputation founded on identity of denomination — *Noscitur ex cognominibus.*

Of the fallacies belonging to this class, the common character is the endeavour to draw aside attention from the *measure* to the *man*;* and this in such sort as, from the supposed imperfection on the part of the man by whom a measure is supported or opposed, to cause a correspondent imperfection to be imputed to the measure so supported, or excellence to the measure so opposed. The argument in its various shapes amounts to this: — In bringing forward or supporting the measure in question, the person in question entertains a bad design; therefore the measure is bad: — he is a person of a bad character; therefore the measure is bad: — he is actuated by a bad motive; therefore the measure is bad: — he has fallen into inconsistencies; on a former occasion, he either opposed it, or made some observation not reconcilable with some observation which he has advanced on the present occasion; therefore the measure is bad: —he is on a footing of intimacy with this or that person, who is a man of dangerous principles and designs, or has been seen more or less frequently in his company, or has professed, or is suspected of entertaining some opinion which the other has professed, or been suspected of entertaining; therefore the measure is bad:—he bears a name that at a former period was borne by a set of men now no more, by whom bad principles were entertained, or bad things done; therefore the measure is bad.

In these arguments, thus arranged, a sort of anti-climax may be observed; the fact intimated by each succeeding argument being suggested in the character of evidence of the one immediately preceding it, or at least of some one or more of those which precede it, and the conclusion being accordingly weaker and weaker at each step. The second is a sort of circumstantial evidence of the first, the third of the second, and so on. If the first is inconclusive, the rest fall at once to the ground.

Exposure. — Various are the considerations which concur in demonstrating the futility of the fallacies comprehended in this class, and (not to speak of the improbity of the utterers) the weakness of those with whom they obtain currency — the weakness of the acceptors:—

1. In the first place comes that general character of irrelevancy which belongs to these, in common with the several other articles that stand upon the list of fallacies.

2. In the next place comes the complete inconclusiveness. Whatsoever be their force as applied to a bad measure — to the worst measure that can be imagined, they would be found to apply with little less force to all good measures—to the best measures that can be imagined.

Among 658, or any such large number of persons taken at random, there will be persons of all characters: if the measure is a good one, will it become bad because it is supported by a bad man? If it is bad, will it become good because supported by a good man? If the measure be really inexpedient, why not at once show that it is so? Your producing these irrelevant and inconclusive arguments in lieu of direct ones, though not sufficient to prove that the measure you thus oppose is a good one, *contributes* to prove that you yourselves regard it as a good one.

After these general observations, let us examine, more in detail, the various shapes the fallacy assumes.

§ 1. *To begin with the imputation of bad design.*

The measure in question is not charged with being itself a bad one; for if it be, and in so far as it is thus charged, the argument is not irrelevant and fallacious. The bad design imputed, consists not in the design of carrying this measure, but some other measure, which is thus, by necessary implication, charged with being a bad one. Here, then,

* On the subject of personalities of the vituperative kind, the following are the instructions given by Gerard Hamilton: they contain all he says upon the subject. I. 31, 367, p. 67 — "It is an artifice to be used (but if used by others, to be detected,) to begin some personality, or to throw in something that may bring on a personal altercation, and draw off the attention of the House from the main point." II. 36 (470) p. 86 — "If your cause is too bad, call, in aid, the party" (meaning, probably, the *individual* who stands in the situation of party, not the assemblage of men of whom a political party is composed) — "if the party is bad, call, in aid, the cause: if neither is good, *wound the opponent.*" III., "If a person is powerful, he is to be made obnoxious; if helpless, contemptible; if wicked, detestable." In this we have, so far as concerns the head of personalities, "the whole fruit and result of the experience of one who was by no means unconversant with law," (says his editor, p. 6,) "and had himself sat in parliament for more than forty years; . . . . devoting almost all his leisure and thoughts, during the long period above mentioned, to the examination and discussion of all the principal questions agitated in parliament, and of the several topics and modes of reasoning by which they were either supported or opposed."

four things ought to be proved: viz. 1. That the design of bringing forward the supposed bad measure is really entertained; 2. That this design will be carried into effect; 3. That the measure will prove to be a bad one; 4. That but for the actually proposed measure, the supposed bad one would not be carried into effect.

This is, in effect, a modification of *the fallacy of distrust*, which will shortly be treated of.

But on what ground rests the supposition that the supposed bad measure will, as such a consequence, be carried into effect? The persons by whom, if at all, it will be carried into effect, will be either the legislators for the time being, or the legislators of some future contingent time. As to the legislators for the time being, observe the character and frame of mind which the orator imputes to these his judges: — "Give not your sanction to this measure; for though there may be no particular harm in it, yet if you do give your sanction to it, the same man by whom this is proposed, will propose to you others that will be bad; and such is your weakness, that, however bad they may be, you will want either the discernment necessary to enable you to see them in their true light, or the resolution to enable you to put a negative upon measures, of the mischief of which you are fully convinced." The imbecility of the persons thus addressed in the character of legislators and judges — their consequent unfitness for the situation, — such, it is manifest, is the basis of this fallacy. On the part of these legislators themselves, the forbearance manifested under such treatment on the part of the orator — the confidence entertained of his experiencing such forbearance — afford no inconsiderable presumption of the reality of the character so imputed to them.

§ 2. *Imputation of bad character.*

The inference meant to be drawn from an imputation of bad character, is either to cause the person in question to be considered as entertaining bad designs — *i. e.* about to be concerned in bringing forward future contingent and pernicious measures — or simply to destroy any persuasive force with which, in the character of authority, his opinion is likely to be attended.

In this last case, it is a fallacy opposed to a fallacy of the same complexion, played off on the other side: to employ it, is to combat the antagonist with his own weapons. In the former case, it is another modification of *the fallacy of distrust* — of which hereafter.

In proportion to the degree of efficiency with which a man suffers these instruments of deception to operate upon his mind, he enables bad men to exercise over him a sort of power, the thought of which ought to cover him with shame. Allow this argument the effect of a conclusive one, you put it into the power of any man to draw you at pleasure from the support of every measure which in your own eyes is good — to force you to give your support to any and every measure which in your own eyes is bad. Is it good? — the bad man embraces it, and by the supposition, you reject it. Is it bad? — he vituperates it, and that suffices for driving you into its embrace. You split upon the rocks, because he has avoided them — you miss the harbour, because he has steered into it.

Give yourself up to any such blind antipathy, you are no less in the power of your adversaries than by a correspondently irrational sympathy and obsequiousness you put yourself into the power of your friends.

§ 3. *Imputation of bad motive.*

The proposer of the measure, it is asserted, is actuated by bad motives, from whence it is inferred that he entertains some bad design. This, again, is no more than a modification of *the fallacy of distrust;* but one of the very weakest — 1. Because motives are hidden in the human breast; 2. Because, if the measure is beneficial, it would be absurd to reject it on account of the motives of its author. But what is peculiar to this particular fallacy, is the falsity of the supposition on which it is grounded; viz. the existence of a class or species of motives, to which any such epithet as bad, can with propriety be applied. What constitutes a motive, is the eventual expectation either of some pleasure or exemption from pain; but forasmuch as in itself there is nothing good but pleasure, or exemption from pain, it follows that no motive is bad in itself, though every kind of motive may, according to circumstances, occasion good or bad actions;* and motives of the dissocial cast may aggravate the mischief of a pernicious act. But if the act itself to which the motive gives birth — if in the proposed measure in question there be nothing pernicious, — it is not in the motive's being of the dissocial class — it is not in its being of the self-regarding class, — that there is any reason for calling it a bad one. Upon the influence and prevalence of motives of the self-regarding class, depends the preservation, not only of the species, but of each individual belonging to it. When, from the introduction of a measure, a man beholds the prospect of personal advantage in any shape whatever to himself, — say for example a pecuniary advantage, as being the most ordinary and palpable, or, dyslogistically speaking, the most gross, — it is certain that the contemplation of this advantage must have had some share in causing the conduct he pur-

* See *Introduction to the Principles of Morals and Legislation*, Vol. I.

sues: it may have been the only cause. The measure itself being by the supposition not pernicious, is it the worse for this advantage? On the contrary, it is so much the better. For of what stuff is public advantage composed, but of private and personal advantage?

§ 4. *Imputation of inconsistency.*

Admitting the fact of the inconsistency, the utmost it can amount to, in the character of an argument against the proposed measure, is, the affording a presumption of bad design in a certain way, or of bad character in a certain way and to a certain degree, on the part of the proposer or supporter of the measure. Of the futility of that argument, a view has been already given: and this, again, is a modification of *the fallacy of distrust.*

That inconsistency, when pushed to a certain degree, may afford but too conclusive evidence of a sort of relatively bad character, is not to be denied: if, for example, on a former occasion, personal interest inclining him one way (say against the measure,) arguments have been urged by the person in question against the measure; while on the present occasion, personal interest inclining him the opposite way, arguments are urged by him in favour of the measure, — or if a matter of fact, which on a former occasion was denied, be now asserted, or *vice versâ* — and in each case, if no notice of the inconsistency is taken by the person himself; — the operation of it to his prejudice will naturally be stronger than if an account more or less satisfactory is given by him of the circumstances and causes of the variance.

But, be the evidence with regard to the cause of the change what it may, no inference can be drawn from it against the measure, unless it be that such inconsistency, if established, may weaken the persuasive force of the opinion of the person in question in the character of authority: and in what respect and degree an argument of this complexion is irrelevant, has been already brought to view.

§ 5. *Imputation of suspicious connexions — (noscitur ex sociis.)*

The alleged badness of character on the part of the alleged associate being admitted, the argument now in question will stand upon the same footing as the four preceding; the weakness of which has been already exposed, and will constitute only another branch of *the fallacy of distrust.* But before it can stand on a par even with those weak ones, two ulterior points remain to be established: —

1. One is, the badness of character on the part of the alleged associate.

2. Another is, the existence of a social connexion between the person in question and his supposed associate.

3. A third is, that the influence exercised on the mind of the person in question is such, that in consequence of the connexion he will be induced to introduce and support measures (and those mischievous ones) which otherwise he would not have introduced or supported.

As to the two first of these three supposed facts, their respective degrees of probability will depend on the circumstances of each case. Of the third, the weakness may be exposed by considerations of a general nature. In private life, the force of the presumption in question is established by daily experience: but in the case of a political connexion, such as that which is created by an opposition to one and the same political measure or set of measures, the presumption loses a great part, sometimes the whole, of its force. Few are the political measures, on the occasion of which men of all characters, men of all degrees in the scale of probity and improbity, may not be seen on both sides.

The mere need of information respecting matters of fact, is a cause capable of bringing together, in a state of apparent connexion, some of the most opposite characters.

§ 6. *Imputation founded on identity of denomination — (noscitur ex cognominibus.)*

The circumstances by which this fallacy is distinguished from the last preceding is, that in this case, between the person in question, and the obnoxious persons by whose opinions and conduct he is supposed to be determined or influenced, neither personal intercourse nor possibility of personal intercourse can exist. In the last case, his measures were to be opposed because he was connected with persons of bad character,—in the present, because he bears the same denomination as persons now no more, but who in their own time were the authors of pernicious measures. In so far as a community of interest exists between the persons thus connected by community of denomination, the allegation of a certain community of designs is not altogether destitute of weight. Community of denomination, however, is but the sign, not the efficient cause, of community of interest. What have the Romans of the present day in common with the Romans of early times? Do they aspire to recover the empire of the world?

But when evil designs are imputed to men of the present day, on the ground that evil designs were entertained and prosecuted by their namesakes in time past, whatsoever may be the community of interest, one circumstance ought never to be out of mind: — this is, the gradual melioration of character from the most remote and barbarous, down to the present time; the consequence of which is, that in many particulars the same ends which were formerly pursued by persons of the same denomination are not now pursued; and if

in many others the same ends are pursued, they are not pursued by the same bad means. If this observation pass unheeded, the consequences may be no less mischievous than absurd: that which *has* been, is unalterable. If, then, this fallacy be suffered to influence the mind, and determine human conduct, whatsoever degree of depravity be imputed to preceding generations of the obnoxious denomination — whatsoever opposition may have been manifested towards them or their successors, — must continue without abatement to the end of time. "Be my friendship immortal, my enmity mortal," is the sentiment that has been so warmly and so justly applauded in the mouth of a sage of antiquity: but the fallacy here in question proposes to maintain its baneful influence for ever.

It is in matters touching religious persuasion, and to the prejudice of certain sects, that this fallacy has been played off with the greatest and most pernicious effect. In England, particularly against measures for the relief of the Catholics, "those of our ancestors, who, professing the same branch of the Christian religion as that which you now profess, were thence distinguished by the same name, entertained pernicious designs, that for some time showed themselves in pernicious measures; therefore you, entertaining the same pernicious designs, would now, had you but power enough, carry into effect the same pernicious measures: — they, having the power, destroyed by fire and faggot those who, in respect of religious opinions and ceremonies, differed from them; therefore, had you but power enough, so would you." Upon this ground, in one of the three kingdoms, a system of government continues, which does not so much as profess to have in view the welfare of the majority of the inhabitants, — a system of government in which the interest of the many is avowedly, so long as the government lasts, intended to be kept in a state of perpetual sacrifice to the interest of the few. In vain is it urged, these inferences, drawn from times and measures long since past, are completely belied by the universal experience of all present time. In the Saxon kingdom, in the Austrian empire, in the vast and ever-flourishing empire of France, though the sovereign is Catholic, whatsoever degree of security the government allows of, is possessed alike by Catholics and Protestants. In vain is it observed (not that to this purpose this or any other part of the history of the 17th century is worth observing) — in vain is it observed, and truly observed, the Church of England continued her fires after the Church of Rome had discontinued hers.*

It is only in the absence of interest, that experience can hope to be regarded, or reason heard. In the character of sinecurists and over-paid placemen, it is the interest of the members of the English government to treat the majority of the people of Ireland on the double footing of enemies and subjects; and such is the treatment which is in store for them to the extent of their endurance.

§ 7. *Cause of the prevalence of the fallacies belonging to this class.*

Whatsoever be the nature of the several instruments of deception by which the mind is liable to be operated upon and deceived, the degree of prevalence they experience — the degree of success they enjoy, depends ultimately upon one common cause, viz. the ignorance and mental imbecility of those on whom they operate. In the present instance, besides this ultimate cause or root, they find in another fallacy, and the corresponding propensity of the human mind, a sort of intermediate cause. This is the fallacy of authority: the corresponding propensity is the propensity to save exertion by resting satisfied with authority. Derived from, and proportioned to, the ignorance and weakness of the minds to which political arguments are addressed, is the propensity to judge of the propriety or impropriety of a measure from the supposed character or disposition of its supporters or opposers, in preference to, or even in exclusion of, its own intrinsic character and tendency. Proportioned to the degree of importance attached to the character and disposition of the author or supporter of the measure, is the degree of persuasive force with which the fallacies belonging to this class will naturally act.

Besides, nothing but laborious application and a clear and comprehensive intellect, can enable a man on any given subject to employ successfully relevant arguments drawn from the subject itself. To employ personalities, neither labour nor intellect is required: in this sort of contest, the most idle and the most ignorant are quite on a par with, if not superior to, the most industrious and the most highly-gifted individuals. Nothing can be more convenient for those who would speak without the trouble of thinking: the same ideas are brought forward over and over again, and all that is required is to vary the turn of expression. Close and relevant arguments have very little hold on the passions, and serve rather to quell than to inflame them; while in personalities, there is always something stimulant, whether on the part of him who praises, or him who blames. Praise forms a kind of connexion between the party praising and the party praised, and vituperation gives an air of courage and independence to the party who blames.

* Under James I., when, for being Anabaptists or Arians, two men were burnt in Smithfield.

Ignorance and indolence, friendship and enmity, concurring and conflicting interest, servility and independence — all conspire to give personalities the ascendency they so unhappily maintain. The more we lie under the influence of our own passions, the more we rely on others being affected in a similar degree. A man who can repel these injuries with dignity may often convert them into triumph: "Strike me, but hear," says he; and the fury of his antagonist redounds to his own discomfiture.

CHAPTER II.

§ 1. *The Hobgoblin Argument, or, No Innovation! — (ad metum.)*

Exposition.—The hobgoblin, the eventual appearance of which is denounced by this argument, is *anarchy;* which tremendous spectre has for its forerunner the monster *innovation.* The forms in which this monster may be denounced are as numerous and various as the sentences in which the word *innovation* can be placed.

"*Here it comes!*" exclaims the barbarous or unthinking servant in the hearing of the affrighted child, when, to rid herself of the burthen of attendance, such servant scruples not to employ an instrument of terror, the effects of which may continue during life. "*Here it comes!*" is the cry; and the hobgoblin is rendered but the more terrific by the suppression of its name.

Of a similar nature, and productive of similar effects, is the political device here exposed to view. As an instrument of deception, the device is generally accompanied by personalities of the vituperative kind: — imputation of bad motives, bad designs, bad conduct and character, &c. are ordinarily cast on the authors and advocates of the obnoxious measure; whilst the term employed is such as to beg the question in dispute. Thus, in the present instance, *innovation* means a *bad* change; presenting to the mind, besides the idea of a *change*, the proposition, either that change in general is a bad thing, or at least that the sort of change in question is a bad change.

Exposure.— All-comprehensiveness of the condemnation passed by this fallacy.

This is one of the many cases in which it is difficult to render the absurdity of the argument more glaring than it is upon the face of the argument itself.

Whatever reason it affords for looking upon the proposed measure, be it what it may, as about to be mischievous, it affords the same reason for entertaining the same opinion of everything that exists at present. To say all new things are bad, is as much as to say all things are bad — or, at any event, at their commencement: for of all the old things ever seen or heard of, there is not one that was not once new. Whatever is now *establishment*, was once *innovation.*

He who on this ground condemns a proposed measure, condemns, in the same breath, whatsoever he would be most averse to be thought to disapprove: — he condemns the Revolution, the Reformation, the assumption made by the House of Commons of a part in the penning of the laws in the reign of Henry VI., the institution of the House of Commons itself in the reign of Henry III.: — all these he bids us regard as sure forerunners of the monster anarchy, but particularly the birth and first efficient agency of the House of Commons — an innovation, in comparison of which all others, past or future, are for efficiency, and consequently mischievousness, but as grains of dust in the balance.

§ 2. *Apprehension of mischief from change — what foundation it has in truth.*

A circumstance that gives a sort of colour to the use of this fallacy is, that it can scarcely ever be found without a certain degree of truth adhering to it. Supposing the change to be one which cannot be effected without the interposition of the legislature, even this circumstance is sufficient to attach to it a certain quantity of mischief. The words necessary to commit the change even to writing, cannot be put into that form without labour, importing a proportional quantity of vexation to the head employed in it; which labour and vexation, if paid for, is compensated by and productive of expense. When disseminated by the operation of the press, as it always must be before it can be productive of whatever effect is aimed at, it becomes productive of ulterior vexation and expense. Here, then, is so much unavoidable mischief, of which the most salutary and indispensable change cannot fail to be productive: to this natural and unavoidable portion of mischief, the additions that have been made, in the shape of factitious and avoidable mischief of the same kind, are such as have sufficient claim to notice, but to a notice not proper for this place.

Here, then, we have the *minimum* of mischief which accompanies every change; and in this minimum of mischief we have the minimum of truth with which this fallacy is accompanied, and which is sufficient to protect it against exposure, from a flat and undiscriminating denial.

It is seldom, however, that the whole of the mischief, with the corresponding portion of truth, is confined within such narrow bounds.

Wheresoever any portion, however great or small, of the aggregate mass of the objects of desire in any shape — matter of wealth, power, dignity, or even reputation — and

whether in possession, or only in prospect, and that ever so remote and contingent — must, in consequence of the change, pass out of any hand or hands that are not willing to part with it, viz. either without compensation, or with no other than what, in their estimation, is insufficient; — here we have, in some shape or other, a quantity of vexation uncompensated — so much vexation, so much mischief beyond dispute.

But in one way or other, whether from the total omission of this or that item, or from the supposed inadequacy of the compensation given for it, or from its incapacity of being included in any estimate, as in case of remote and but weakly probable as well as contingent profits, it will not unfrequently happen that the compensation allotted in this case shall be inadequate, not only to the desires, but to the imagined rights of the party from whom the sacrifice is exacted. In so far as such insufficiency appears to himself to exist, he will feel himself urged by a motive, the force of which will be in proportion to the amount of such deficiency, to oppose the measure; and in so far as in his eyes such motive is fit to be displayed, it will constitute what in his language will be *reason*, and what will be received in that character by all other persons in whose estimate any such deficiency shall appear to exist. So far as any such deficiency is specifically alleged in the character of a reason, it forms a relevant and specific argument, and belongs not to the account of fallacies; and, if well founded, constitutes a just reason, if not for quashing the measure, at any rate for adding to the compensation thus shown to be deficient. And in this shape, viz. in that of a specific argument, will a man of course present his motive to view, if it be susceptible of it. But when the alleged damage and eventual injury will not, even in his own view of it, bear the test of inquiry, then, this specific argument failing him, he will betake himself to the general fallacy in lieu of it. He will set up the cry of *Innovation! Innovation!* hoping by this watchword to bring to his aid all whose sinister interest is connected with his own; and to engage them to say, and the unreflecting multitude to believe, that the change in question is of the number of those in which the mischief attached to it is not accompanied by a preponderant mass of advantage.

§ 3. *Time the innovator-general, a counter-fallacy.*

Among the stories current in the profession of the law, is that of an attorney, who, when his client applied to him for relief against a forged bond, advised him, as the shortest and surest course, to forge a release.

Thus, as a shorter and surer course than that of attempting to make men sensible of the imposture, this fallacy has been every now and then met by what may be termed its counter-fallacy: *Time itself is the arch-innovator.* The inference is, the proposed change, branded as it has thus been by the odious appellative of innovation, is in fact no change: its sole effect being either to prevent a change, or to bring the matter back to the good state in which it formerly was. This counter-fallacy, if such it may be termed, has not, however, any such pernicious properties or consequences attached to it as may be seen to be indicated by that name. Two circumstances, however, concur in giving it a just title to the appellation of a fallacy: one is, that it has no specific application to the particular measure in hand, and on that score may be set down as irrelevant; the other, that by a sort of implied concession and virtual admission, it gives colour and countenance to the fallacy to which it is opposed, — admitting by implication, that if the appellation of a change belonged with propriety to the proposed measure, it might on that single account with propriety be opposed.

A few words, then, are now sufficient to strip the mask from this fallacy. No specific mischief, as likely to result from the specific measure, is alleged; if it were, the argument would not belong to this head. What is alleged, is nothing more than that mischief, without regard to the amount, would be among the results of this measure. But this is no more than can be said of every legislative measure that ever did pass, or ever can pass. If, then, it be to be ranked with arguments, it is an argument that involves in one common condemnation all political measures whatsoever, past, present, and to come; it passes condemnation on whatsoever, in this way, ever has been, or ever can be done, in all places as well as in all times. Delivered from an humble station, from the mouth of an old woman beguiling by her gossip the labours of the spinning-wheel in her cottage, it might pass for simple and ordinary ignorance: — delivered from any such exalted station as that of a legislative house or judicial bench, — from such a quarter, if it can be regarded as sincere, it is a mark of *drivelling* rather than ignorance.

But it may be said — "My meaning is not to condemn all change — not to condemn all new institutions, all new laws, all new measures, — only violent and dangerous ones, such as that is which is now proposed." The answer is: Neither drawing or attempting to draw any line, you do by this indiscriminating appellative pass condemnation on all change — on everything to which any such epithet as *new* can with propriety be applied. Draw any such line, and the reproach of insincerity or imbecility shall be withholden: draw your line; but remember, that whenever

you do draw it, or so much as begin to draw it, you give up this your argument.

Alive to possible-imaginable evils, dead to actual ones — eagle-eyed to future contingent evils, blind and insensible to all existing ones, — such is the character of the mind, to which a fallacy such as this can really have presented itself in the character of an argument possessing any the smallest claim to notice. To such a mind,— that by denial and sale of justice, anarchy, in so far as concerns nine-tenths of the people, is actually by force of law established, and that it is only by the force of morality — of such morality as all the punishments denounced against sincerity, and all the reward applied for the encouragement of insincerity, have not been able to banish, — that society is kept together; — that to draw into question the fitness of great characters for their high situations, is in one man a crime, while to question their fitness, so that their motives remain unquestioned, is lawful to another; — that the crime called *libel* remains undefined and undistinguishable, and the liberty of the press is defined to be the absence of that security which would be afforded to writers by the establishment of a licenser; — that under a show of limitation, a government shall be in fact an absolute one, while pretended guardians are real accomplices, and at the nod of a king or a minister, by a regular trained body of votes, black shall be declared white — miscarriage, success — mortality, health—disgrace, honour—and notorious experienced imbecility, consummate skill; — to such a mind, these, with other evils boundless in extent and number, are either not seen to be in existence, or not felt to be such. In such a mind, the horror of innovation is as really a disease as any to which the body in which it is seated is exposed. And in proportion as a man is afflicted with it, he is the enemy of all good, which, how urgent soever may be the demand for it, remains as yet to be done; nor can he be said to be completely cured of it, till he shall have learnt to take, on each occasion, and without repugnance, general utility for the general end, and to judge of whatever is proposed, in the character of a means conducive to that end.

§ 4. *Sinister interests in which this fallacy has its source.*

Could the wand of that magician be borrowed, at whose potent touch the emissaries of his wicked antagonist threw off their several disguises, and made instant confession of their real character and designs, — could a few of those ravens by whom the word *innovation* is uttered with a scream of horror, and the approach of the monster *anarchy* denounced, — be touched with it, we should then learn their real character, and have the true import of these screams translated into intelligible language.

1. I am a lawyer (would one of them be heard to say,)— a fee-fed judge — who, considering that the money I lay up, the power I exercise, and the respect and reputation I enjoy, depend on the undiminished continuance of the abuses of the law, the factitious delay, vexation, and expense with which the few who have money enough to pay for a chance of justice are loaded, and by which the many who have not, are cut off from that chance, — take this method of deterring men from attempting to alleviate those torments in which my comforts have their source.

2. I am a sinecurist (cries another,) who being in the receipt of £38,000 a-year, public money, for doing nothing, and having no more wit than honesty, have never been able to open my mouth and pronounce any articulate sound for any other purpose, — yet, hearing a cry of "No sinecures!" am come to join in the shout of "No innovation! down with the innovators!" in hopes of drowning, by these defensive sounds, the offensive ones which chill my blood and make me tremble.

3. I am a contractor (cries a third,) who having bought my seat that I may sell my votes — and in return for them, being in the habit of obtaining with the most convenient regularity a succession of good jobs, foresee, in the prevalence of innovation, the destruction and the ruin of this established branch of trade.

4. I am a country gentleman (cries a fourth,) who observing that from having a seat in a certain assembly a man enjoys more respect than he did before, on the turf, in the dog-kennel, and in the stable, and having tenants and other dependents enough to seat me against their wills for a place in which I am detested, and hearing it said that if innovation were suffered to run on unopposed, elections would come in time to be as free in reality as they are in appearance and pretence, — have left for a day or two the cry of "Tally-ho!" and "Hark forward!" to join in the cry of "No Anarchy!" "No innovation!"

5. I am a priest (says a fifth,) who having proved the pope to be antichrist to the satisfaction of all orthodox divines whose piety prays for the cure of souls, or whose health has need of exoneration from the burthen of residence; and having read, in my edition of the Gospel, that the apostles lived in palaces, which innovation and anarchy would cut down to parsonage-houses; though grown hoarse by screaming out, "No reading!" "No writing!" "No Lancaster!" and "No popery!" — for fear of coming change, am here to add what remains of my voice to the full chorus of "No Anarchy!" "No Innovation!"

CHAPTER III.

FALLACY OF DISTRUST, OR, WHAT'S AT THE BOTTOM? — (*ad metum.*)

Exposition. — This argument may be considered as a particular modification of the *No-Innovation* argument. An arrangement or set of arrangements has been proposed, so plainly beneficial, and at the same time so manifestly innoxious, that no prospect presents itself of bringing to bear upon them with any effect the cry of No innovation. Is the anti-innovationist mute? No; he has this resource: — In what you see as yet (says he) there may perhaps be no great mischief; but depend upon it, in the quarter from whence these proposed innoxious arrangements come, there are *more behind* that are of a very different complexion; if these innoxious ones are suffered to be carried, others of a noxious character will succeed without end, and will be carried likewise.

Exposure. — The absurdity of this argument is too glaring to be susceptible of any considerable illustration from anything that can be said of it: —

1. In the first place, it begins with a virtual admission of the propriety of the measure considered in itself; and thus containing within itself a demonstration of its own futility, it cuts up from under it the very ground which it is endeavouring to make: yet, from its very weakness, it is apt to derive for the moment a certain degree of force. By the monstrosity of its weakness, a feeling of surprise, and thereupon of perplexity, is apt to be produced: and so long as this feeling continues, a difficulty of finding an appropriate answer continues with it. For that which is itself nothing, what answer (says a man) can I find?

If two measures — G and B — were both brought forward at the same time, G being good and B bad; — rejecting G, because B is bad, would be quite absurd enough; and at first view a man might be apt to suppose that the force of absurdity could go no further.

But the present fallacy does in effect go much further: — two measures, both of them brought upon the carpet together, both of them unobjectionable, are to be rejected, not for anything that is amiss in either of them, but for something that by possibility may be found amiss in some other or others that nobody knows of, and the future existence of which, without the slightest ground, is to be assumed and taken for granted.

In the field of policy as applied to measures, this vicarious reprobation forms a counterpart to vicarious punishment in the field of justice as applied to persons.

The measure G, which is good, is to be thrown out, because, for aught we can be sure of, some day or other it may happen to be followed by some other measure B, which may be a bad one. A man A, against whom there is neither evidence nor charge, is to be punished, because, for aught we can be sure of, some time or other there may be some other man who will have been guilty.

If on this ground it be right that the measure in question be rejected, so ought every other measure that ever has been or can be proposed: for of no measure can anybody be sure but that it may be followed by some other measure or measures, of which, when they make their appearance, it may be said that they are bad.

If, then, the argument proves anything, it proves that no measure ought ever to be carried, or ever to have been carried; and that, therefore, all things that can be done by law or government, and therefore law and government themselves, are nuisances.

This policy is exactly that which was attributed to Herod in the extermination of the innocents; and the sort of man by whom an argument of this sort can be employed, is the sort of man who would have acted as Herod did, had he been in Herod's place.

But think, not only what sort of man he must be who can bring himself to employ such an argument; but moreover, what sort of men they must be to whom he can venture to propose it — on whom he can expect it to make any impression, but such a one as will be disgraceful to himself. "Such drivellers," says he to them in effect, "such drivellers are you, so sure of being imposed upon by any one that will attempt it, that you know not the distinction between good and bad; and when, at the suggestion of this or that man, you have adopted any one measure, good or bad, let but that same man propose any number of other measures, whatever be their character, ye are such idiots and fools, that without looking at them yourselves, or vouchsafing to learn their character from others, you will adopt them in a lump." Such is the compliment wrapt up in this sort of argument.

CHAPTER IV.

OFFICIAL MALEFACTOR'S SCREEN — (*ad metum.*)

"Attack us, you attack Government."

Exposition. — The fallacy here in question is employed almost as often as, in speaking of the persons by whom, or of the system on which, the business of the government is conducted, any expressions importing condemnation or censure are uttered. The fallacy consists in affecting to consider such condemnation or censure as being, if not in design,

at least in tendency, pregnant with mischief to government itself: — "Oppose us, you oppose government;" "Disgrace us, you disgrace government;" "Bring us into contempt, you bring government into contempt; and anarchy and civil war are the immediate consequences." Such are the forms it assumes.

Exposure. — Not ill-grounded, most assuredly, is the alleged importance of this maxim: to the class of persons by or for whom it is employed, it must be admitted to be well worth whatsoever pains can be employed in decking it out to the best advantage.

Let but this notion be acceded to, all persons now partaking, or who may at any time be likely to partake, in the business and profit of misrule, must, in every one of its shapes, be allowed to continue so to do without disturbance: all abuses, as well future as present, must continue without remedy. The most industrious labourers in the service of mankind will experience the treatment due to those to whose dis-social or selfish nature the happiness of man is an object of aversion or indifference. Punishment, or at least disgrace, will be the reward of the most exalted virtue; perpetual honour, as well as power, the reward of the most pernicious vices. Punishment will be, and so by English libel-law it is at this day — let but the criminal be of a certain rank in the state, and the mischief of the crime upon a scale to a certain degree extensive — punishment will be, not for him who commits a crime, but for him who complains of it.

So long as the conduct of the business of the government contains anything amiss in it — so long as it contains in it anything that could be made better — so long, in a word, as it continues short of a state of absolute perfection, — there will be no other mode of bringing it nearer to perfection — no other means of clearing it of the most mischievous abuses with which government can be defiled, than the indication of such points of imperfection as at the time being exist, or are supposed to exist in it; which points of imperfection will always be referable to one or other of two heads: the conduct of this or that one of the individuals by whom in such or such a department the business of government is conducted; or the state of the system of administration under which they act. But neither in the system in question, nor in the conduct of the persons in question, can any imperfection be pointed out, but that, as towards such persons or such system, in proportion to the apparent importance and extent of that imperfection, aversion or contempt must in a greater or less degree be produced.

In effect, this fallacy is but a mode of intimating in other words, that no abuse ought to be reformed — that nothing ought to be uttered in relation to the misconduct of any person in office, which may produce any sentiment of disapprobation.

In this country at least, few if any persons aim at any such object as the bringing into contempt any of those offices on the execution of which the maintenance of the general security depends; — any such office, for example, as that of king, member of parliament, or judge. As to the person of the king, if the maxim, "The king can do no wrong," be admitted in both its senses, there can be no need of imputing blame to him, unless in the way of defence against the imprudence or the improbity of those who, by groundless or exaggerated eulogiums on the personal character of the individual monarch on the throne, seek to extend his power, and to screen from censure or scrutiny the misconduct of his agents.

But in the instance of any other office, to reprobate everything the tendency of which is to expose the officer to hatred or contempt, is to reprobate everything that can be said or done, either in the way of complaint against past, or for the purpose of preventing future transgressions; — to reprobate everything the tendency of which is to expose the office to hatred or contempt, is to reprobate everything that can be said or done towards pointing out the demand for reform, how needful soever, in the constitution of the office.

If in the constitution of the office, in respect of mode of appointment, mode of remuneration, &c., there be anything that tends to give all persons placed in it an interest acting in opposition to official duty, or to give an increased facility to the effective pursuit of any such sinister interest, everything that tends to bring to view such sinister interest, or such facility, contributes, it may be said, to bring the office itself into contempt.

That under the existing system of judicature, so far as concerns its higher seats, the interest of the judge is, throughout the whole field of his jurisdiction, in a state of constant and diametrical opposition to the line of his duty; — that it is his interest to maintain undiminished, and as far as possible to increase, every evil opposite to the ends of justice, viz. uncertainty, delay, vexation and expense; — that the giving birth to these evils has at all times been more or less an object with every judge (the present ones excepted, of whom we say nothing) that ever sat on a Westminster-Hall bench; — and that, under the present constitution of the office, it were weakness to expect at the hands of a judge anything better; — whilst, that of the abovementioned evils, the load which is actually endured by the people of this country, is, as to a very small part only, the natural and un-

avoidable lot of human nature; — are propositions which have already in this work been made plain to demonstration, and in the belief of which the writer has been confirmed by the observations of nearly sixty years — propositions, of the truth of which he is no more able to entertain a doubt, than he is of his own existence.

But in these sentiments, has he any such wish as to see enfeebled and exposed to effectual resistance the authority of judges? — of any established judicatory?—of any one occupier of any such judicial seat? No: the most strenuous defender of abuse in every shape would not go further than he in wishes, and upon occasion in exertion, for its support.

For preventing, remedying, or checking transgression on the part of the members of government, or preventing their management of the business of government from becoming completely arbitrary, the nature of things affords no other means than such, the tendency of which, as far as they go, is to lower either these managing hands, or the system, or both, in the affection and estimation of the people: which effect, when produced in a high degree, may be termed bringing them into hatred and contempt.

But so far is it from being true that a man's aversion or contempt for the hands by which the powers of government, or even for the system under which they are exercised, is a proof of his aversion or contempt towards government itself, that, even in proportion to the strength of that aversion or contempt, it is a proof of the opposite affection. What, in consequence of such contempt or aversion, he wishes for, is, not that there be no hands at all to exercise these powers, but that the hands may be better regulated; — not that those powers should not be exercised at all, but that they should be better exercised; — not that, in the exercise of them, no rules at all should be pursued, but that the rules by which they are exercised should be a better set of rules.

All government is a trust — every branch of government is a trust, and immemorially acknowledged so to be: it is only by the magnitude of the scale, that public differ from private trusts.

I complain of the conduct of a person in the character of guardian — as domestic guardian, having the care of a minor or insane person. In so doing, do I say that guardianship is a bad institution? Does it enter into the head of any one to suspect me of so doing?

I complain of an individual in the character of a commercial agent, or assignee of the effects of an insolvent. In so doing, do I say that commercial agency is a bad thing?—that the practice of vesting in the hands of trustees or assignees the effects of an insolvent, for the purpose of their being divided among his creditors, is a bad practice? Does any such conceit ever enter into the head of man, as that of suspecting me of so doing?

I complain of an imperfection in the state of the law relative to guardianship. In stating this supposed imperfection in the state of the law itself, do I say that there ought to be no law on the subject? — that no human being ought to have any such power as that of guardian over the person of any other? Does it ever enter into the head of any human being to suspect me so much as of entertaining any such persuasion, not to speak of endeavouring to cause others to entertain it?

Nothing can be more groundless than to suppose that the disposition to pay obedience to the laws by which security in respect of person, property, reputation, and condition in life, is afforded, is influenced by any such consideration as that of the fitness of the several functionaries for their respective trusts, or even so much as by the fitness of the system of regulations and customs under which they act.

The chief occasions in which obedience on the part of a member of the community, in his character of subject, is called upon to manifest itself, are the habitual payment of taxes, and submission to the orders of courts of justice: the one an habitual practice, the other an occasional and eventual one. But in neither instance in the disposition to obedience, is any variation produced by any increase or diminution in the good or ill opinion entertained in relation to the official persons by whom the business of those departments is respectively carried on, or even in relation to the goodness of the systems under which they act.

Were the business of government carried on ever so much worse than it is, still it is from the power of government in its several branches, that each man receives whatsoever protection he enjoys, either against foreign or domestic adversaries. It is therefore by his regard for his own security, and not by his respect either for the persons by whom, or the system according to which, those powers are exercised, that his wish to see obedience paid to them by others, and his disposition to pay obedience to them himself, are produced.

Were it even his wish to withhold from them his own obedience, that wish cannot but be altogether ineffectual, unless and until he shall see others in sufficient number disposed and prepared to withhold each of them his own obedience — a state of things which can only arise from a common sense of overwhelming misery, and not from the mere utterance of complaint. There is no freedom of the press, no power to complain, in Turkey; yet of all countries it is that in which revolts and revolutions are the most frequent and the most violent.

Here and there a man of strong appetites,

weak understanding and stout heart excepted, it might be affirmed with confidence that the most indigent and most ignorant would not be foolish enough to wish to see a complete dissolution of the bonds of government. In such a state of things, whatsoever he might expect to grasp for the moment, he would have no assured hope of keeping. Were he ever so strong, his strength, he could not but see, would avail him nothing against a momentarily confederated multitude; nor in one part of his field, against a swifter individual ravaging the opposite part; nor during sleep, against the weakest and most sluggish: and for the purpose of securing himself against such continually-impending disasters, let him suppose himself entered into an association with others-for mutual security, — he would then suppose himself living again under a sort of government.

Even the comparatively few who, for a source of subsistence, prefer depredation to honest industry, are not less dependent for their wretched and ever palpitating existence than the honest and industrious are for theirs, on that general security to which their practice creates exceptions. Be the momentary object of his rapacity what it may, what no one of them could avoid having a more or less distinct conception of, is, that it could not exist for him further than it is secured against others.

So far is it from being true, that no government can exist consistently with such exposure, no good government can exist without it.

Unless by open and lawless violence, by no other means than lowering in the estimation of the people the hands by which the powers of government are exercised, if the cause of the mischief consist in the unfitness of the hands — or the system of management under which they act, if the cause of the mischief lie in the system — be the hands ever so unfit, or the system ever so ill-constructed, — can there be any hope or chance of beneficial change.

There being no sufficient reason for ascribing even to the worst-disposed any wish so foolish as that of seeing the bonds of government dissolved, nor on the part of the best-disposed any possibility of contributing to produce change, either in any ruling hands deemed by them unfit for their trust, or of the system deemed by them ill adapted to those which are or ought to be its ends, otherwise than by respectively bringing into general disesteem these objects of their disapprobation, — there cannot be a more unfounded imputation, or viler artifice if it be artifice, or grosser error if it be error, than that which infers from the disposition, or even the endeavour to lessen in the estimation of the people the existing rulers, or the existing system, any such wish as that of seeing the bands of government dissolved.

In producing a local or temporary debility in the action of the powers of the natural body, in many cases, the honest and skilful physician beholds the only means of cure: and from the act of the physician who prescribes an evacuant or a sedative, it would be as reasonable to infer a wish to see the patient perish, as from the act of a statesman, whose endeavours are employed in lowering the reputation of the official hands in whom, or the system of management in which, he beholds the cause of what appears to him amiss, — to infer a wish to see the whole frame of government either destroyed or rendered worse.

In so far as a man's feeling and conduct are influenced and determined by what is called *public opinion*, by the force of the *popular* or *moral sanction*, and that opinion runs in conformity with the dictates of the principles of general utility, — in proportion to the value set upon reputation, and the degree of respect entertained for the community at large, his conduct will be the *better*, the more completely the quantity of respect he enjoys is dependent upon the goodness of his behaviour: it will be the *worse*, the more completely the quantity of respect he is sure of enjoying is independent of it.

Thus, whatsoever portion of respect the people at large are in the habit of bestowing upon the individual by whom, on any given occasion, the office in question is filled, this portion of respect may, so long as the habit continues, be said to be attached to the office, just as any portion of the emolument is, which happens to be attached to the office.

But as it is with emolument, so is it with respect. The greater the quantity of it a man is likely to receive independently of his good behaviour, the less good, in so far as depends upon the degree of influence with which the love of reputation acts upon his mind, is his behaviour likely to be.

If this be true, it is in so far the interest of the public, that that portion of respect, which along with the salary is habitually attached to the office, should be as small as possible.

If, indeed, the notion which it is the object of the fallacy in question to inculcate were true, viz. that the stability of the government, or its existence at each given point of time, depends upon the degree of respect bestowed upon the several individuals by whom at that point of time its powers are exercised, — if this were true, it would not be the interest of the public that the portion of respect habitually attached to the office, and received by the official person independently of his good behaviour in it, should be as small as possible. But in how great a degree this notion is erroneous, has been shown already.

But while it is the interest of the public, that in the instance of each trustee of the public, the remuneration received by him in the shape of respect should be as completely dependent as possible upon the goodness of his behaviour in the execution of his trust, it is the interest of the trustee himself that, as in every other shape, so in the shape of respect, whatsoever portion of the good things of this world he receives, on whatever score, whether on the score of remuneration or any other, should be as great as possible; since by good behaviour, neither respect nor anything else can be always earned by him but by sacrifices in some shape or other, and in particular in the shape of ease.

Whatsoever, therefore, be the official situation which the official person in question occupies, it is his interest that the quantity of respect habitually attached to it be as great, and at the same time as securely attached to it, as possible.

And in the point of view from which he is by his personal and sinister interest led to consider the subject, the point of perfection in this line will not be attained until the quantity of respect he receives, in consequence of the possession he has of the office, be at all times as great as the nature of the office admits — at all times as completely independent of the goodness of his behaviour in his office as possible — as great, in the event of his making the worst and least good use, as in that of his making the best and the least bad use, of the powers belonging to it.

Such being his interest, whatsoever be his official situation, if, as is the case of most, if not all official situations, it be of such a nature as to have power in any shape attached to it, his endeavour and study will be so to order matters as to cause to be attached to it as above, and by all means possible, the greatest portion of respect possible.

To this purpose, amongst others, will be directed whatsoever influence his will can be made to act with on other wills, and whatsoever influence his understanding can be made to exert over other understandings.

If, for example, his situation be that of a judge, — by the influence of will on will, it will seldom in any considerable degree be in his power to compel men by force to bestow upon him the sentiment of respect, either by itself, or in any considerable degree by means of any external mark or token of it: but he may restrain men from saying or doing any of those things, the effect of which would be to cause others to bestow upon him less respect than they would otherwise.

If, being a judge of the King's Bench, any man has the presumption to question his fitness for such his high situation, he may for so doing punish him by fine and imprisonment with *et cæteras*. If a Lord Chancellor, he may prosecute him before a judge, by whom a disposition to attach such punishments to such offences has been demonstrated by practice.

Thus much as to what can, and what cannot be done, towards attaching respect to office, by the influence of will on will.

What may be done by the influence of understanding on understanding, remains to be noticed. Laying out of the question that influence which, in the official situation in question, is exercised over the understandings of the people at large, independently of any exertions on the part of him by whom it is filled, — that which on his part requires exertion, and is capable of being exercised by exertion, consists in the giving utterance and circulation in the most impressive manner to the fallacy in question, together with a few such others as are more particularly connected with it.

Upon the boldness and readiness with which the hands and system are spoken ill of, depends the difference between arbitrary and limited government — between a government in which the great body of the people have, and one in which they have not, a share.

In respect of the members of the governing body, undoubtedly the state of things most to be desired is, that the only occasion on which any endeavours should be employed to lower them in the estimation of the public should be those in which inaptitude in some shape or other, want of probity, or weakness of judgment, or want of appropriate talent, have justly been imputable to them: that on those occasions in which inaptitude has not in any of those shapes been justly imputable, no such endeavour should ever be employed.

Unfortunately, the state of things hereby supposed is plainly (need it be said?) an impossible one. Admit no accusation, you may, and you will exclude all unjust ones: admit just ones, you must admit unjust ones along with them; there is no help for it. One of two evils being necessary to be chosen, the question is, which is the least? — to admit all such imputations, and thereby to admit of unjust ones? or to exclude all such imputations, and thereby to exclude all just ones? I answer without difficulty, — the admission of unjust imputations is, beyond comparison, the least of the two evils. Exclude all unjust imputations, and with them all just ones, — the only check by which the career of deterioration can be stopped being thus removed, both *hands* and *system* will, until they arrive at the extreme of despotism and misrule, be continually growing worse and worse: the hands themselves will grow worse and worse, having nothing to counteract the force of that separate and sinister interest to the action of which they remain constantly exposed; and the system itself will grow worse and worse,

it being all along, the interest, and, by the supposition, within the power, of the hands themselves to make it so.

Admit just imputations, though along with them you admit unjust ones, — so slight is the evil as scarcely to bear that name. Along with unjust imputations, are not defences admitted? In respect of motives and of means, have not the defendants in this case, beyond all comparison, the advantage of the complainants?

As far as concerns *motives*, in the instance of every person included in the attack (and in an attack made upon any one member of the government as such, who does not know how apt all are to feel themselves included?) the principle of self-preservation is stronger than the exciting cause productive of the disposition to attack can be in any instance.

As far as concerns *means* of defence, if the person against whom the attack is principally levelled wants time or talent to defend himself, scarce a particle of the immense mass of the matter of reward, — which, in all manner of shapes, for the purpose of carrying on the ordinary business of government, lies constantly at the disposal of the members of the government,—but is applicable, even without any separate expense, to the extraordinary purpose of engaging defending advocates.

Let it not be said — "This is a persecution to which an honourable man ought not to be exposed — a persecution which, though to some honourable men it may be tolerable, will to others be intolerable — intolerable to such a degree as to deprive the public of the benefit of their services."

A notion to any such effect will scarcely be advanced with a grave face. That censure is the tax imposed by nature upon eminence, is the A B C of common place. Who is there to whom it can be a doubt that exposure to such imputations is among the inevitable appendages of office? If it were an office which in no shape whatever had any adequate allowance of the matter of reward annexed to it — if it were a situation into which men were pressed — the observation would have some better ground; but in the class of office here in question, exists there any such?

A self-contradiction is involved in the observation itself. The subject, of which sensibility thus morbid is predicated, is *an honourable man:* but to an honourable man, to any man to whom the attribute honourable can with truth and justice be applied, such sensibility cannot be attributed. The man who will not accept an office but upon condition that his conduct in it shall remain exempt from all imputation, intends not that his conduct shall be what it ought to be; — the man to whom the idea of being subject to those imputations, to which he sees the best are exposed, is intolerable, — is in his heart a tyrant — and, to become so in practice, wants nothing but to be seated on one of those thrones, or on one of those benches, in which, by the appearance of chains made for show and not for use, a man is enabled, with the greater dignity as well as safety, to act the part of the tyrant, and glut himself with vengeance.

To a man who, in the civil line of office, accepts a commission, it is not less evident that by so doing he exposes himself to imputations, some of which may happen to be unjust, than to a man in the military line it is evident, that by acceptance of a commission in that line he exposes himself to be shot at: and of a military office, with about equal truth might it be said, that an honourable man will not accept it on such condition, as of a civil office, that an honourable man will not accept it if his conduct is to stand exposed to such imputations.

In such circumstances, it is not easy to see how it should happen to a public man to labour at the long-run under an imputation that is not just. In so far as any such incident does take place, evil does in truth take place: but even in this case, the evil will not be unaccompanied with concomitant good, operating in compensation for it. On the part of men in office, it contributes to keep up the habit of considering their conduct as exposed to scrutiny — to keep up in their minds that sense of responsibility on which goodness of conduct depends, in which good behaviour finds its chief security.

On the part of the people at large, it serves to keep alive the expectation of witnessing such attacks, — the habit of looking out for them; and, when any such attack does come, it prevents the idea of hardship which is apt to attach upon any infliction, how necessary soever, of which it can be said that it is unprecedented or even rare; and hinders the public mind from being set against the attack, and him who finds exertion and courage enough to make it.

When, in support of such imputations, false facts are alleged, the act of him by whom such false allegations are made, not only ought to be regarded as pernicious, but ought to be, and is, consistently with justice and utility, punishable — punishable even when advanced through temerity, without consciousness of the falsity, and more so when accompanied with such dishonest consciousness.

But by a sort of law, of which the protection of high-seated official delinquency is at least the effect, not to say the object, a distinction thus obvious as well as important has been carefully overlooked: and whenever, to the prejudice of the reputation of a man, especially if he be a man in office, a fact which has with more or less confidence been asserted or insinuated, turns out to be false,

the existence of dishonest consciousness, whether really existing or not, is assumed.

In so far as public men, trustees and agents for the people in possession or expectancy, are the objects, a general propensity to scrutinize into their conduct, and thereby to cast imputations on it at the hazard of their being more or less unmerited, is a useful propensity — it is conducive to good behaviour on their part: and for the opposite and corresponding reason, the habit of general laudation — laudation without specific grounds — is a mischievous propensity, being conducive to ill behaviour on their part.

Render all such endeavours hopeless, you take from a bad state of things all chance of being better: allow to all such endeavours the freest range, you do no injury to the best state of things imaginable.

Whatsoever facilities the adversaries of the existing state of things have for lowering it in the estimation of the people, equal facilities at least, if not greater, have its friends and supporters for keeping and raising it up.

Under the English constitution, at any rate, the most strenuous defenders of the existing set of managing hands, as well as of the existing system of management, are not backward in representing an opposition as being no less necessary a power among the springs of government than the regulator in a watch.* But in what way is it that opposition, be it what it may, ever acts, or ever can act, but by endeavouring to lower either the managing hands, or, in this or that part of it, the system of management, in the estimation of the people? And from a watchmaker's putting a regulating spring into the watch he is making, it would be just as reasonable and fair to infer that his meaning is to destroy the watch, as from the circumstance of a man seeking, in this or that instance, to lower in the estimation of the people the managing hands, or this or that part of the system of management, to infer a desire on his part to destroy the government.

Under the English constitution at least, not only in point of fact, is the disposition to pay that obedience by which the power of government is constituted, and on which the existence of it depends, independent of all esteem for the hands by which this power is exercised, unaffected by any dis-esteem for this or that part of the system of management according to which it is executed; but, under such a constitution at least, the more complete this independence, the better for the stability and prosperity of the state. Being as it is, it suffices for carrying on at all times the business of government; viz. upon that footing in point of skill and prosperity which is consistent with the aptitude, probity, and intelligence of the managing hands, and the goodness of the system of management under which they act: but if on each occasion it depended on the degree of estimation in which the conduct and character of the managing hands, and the structure of the system of management under which they act, happened at that time to be held by the majority of the people, this power would be seen strong, and perhaps too strong, at one time; weak to any degree of weakness — insufficient to any degree of insufficiency — at another.

Among the peculiar excellencies of the English constitution, one is, that the existence of the government, and even the good conduct of it, depends in a less degree than under any other monarchy upon the personal qualifications of the chief ruler, and upon the place he occupies in the estimation of the people. Conceive the character of the chief ruler perfect to a certain degree of perfection, all checks upon his power would be a nuisance. On the other hand, under a constitution of government into which checks upon that power are admitted, the stronger and more efficient those checks, the worse the personal character of the chief ruler may be, and the business of government still go on without any fatal disturbance.

On recent occasions, as if the endeavour had been new and altogether anomalous to the constitution, great were the outcries against the audacity of those parliamentary electors and other members of the community, who, in the character of petitioners, were using their endeavours to lower the House of Commons in the estimation of the people, or, in stronger terms, to bring it and its authority into contempt. That by the individuals in question, an endeavour of this nature should be regarded as a cause of personal inconvenience, and, as such, be resisted, is natural enough; but as to its being, on the part of the authors of those exertions, blameable — or, on the part of the constitution, dangerous — surely no further observation need here be added.

But what was complained of as an abuse, was the existence of that state of things — of that system of management, under which, in a number sufficient on ordinary occasions to constitute or secure a majority, the members of that governing body have a sinister interest separate from and opposite to that of the people for whom they profess to serve: that being independent as towards those to whom they ought to be dependent, as to those whom it is their duty to controul, and towards whom they ought to be independent they are dependent; and that by means by which, though altogether out of the reach of punishment, the dependence is rendered beyond comparison more constant and effectual than it would be by acts of punishable bribery.

* More's *Observations*, pp. 77, 78.

In this state of things, if any alteration in it be desirable, it is impossible that such alteration should be brought about by other means than lowering in the estimation of the people, not only the system itself, but all those who act willingly under it, and use their endeavours to uphold it.

Without this means, and by any other means, how is it that by possibility any such change should be produced? Supposing them assured of possessing, in the event of a refusal of all such change, as high a place in the estimation of the people as they hold at present, anything done by them in furtherance of such a change would be an effect without a cause. In their personal capacities, they have all, or most of them, little to gain, while they have much to lose, by any proposed change.

True, it may be said, — to be remedied, an imperfection, be it what it may, must be pointed out. But what we complain of as dangerous to government is, not the indication of such imperfections, with their supposed remedies, but the mode in which they are apt to be pointed out — the heat, the violence, with which such indication is accompanied. This we object to, not merely as dishonest, but as unwise, — as tending to irritate the very persons at whose hands the remedy thus pleaded for is sought.

To this, the answer is as follows: —

1. Whatsoever may be the terms most decorous, and, upon the supposition, the best adapted to the obtaining of the relief desired, it is not possible to comprise them in any such scheme of description as will enable a man to satisfy himself beforehand what terms will be considered exposed to, what exempt from, censure.

2. The cause of irritation is not so properly in the terms of the application, as in the substance and nature of the application itself; so that the greatest irritation would be produced by that mode of application, whichever it were, that appeared most likely to produce the effect in question — the effect the production of which is on the one part an object of desire, on the other of aversion; the least irritation by that which, in whatever terms couched, afforded the fairest pretence for non-compliance.

3. The imperfection in question being, by the supposition, one of a public nature, the advantages of which are enjoyed by a few, while the interest which the many, each taken individually, have in the removal of the imperfection is commonly comparatively small and remote, no little difficulty is commonly experienced by any one whose endeavour it should be to persuade the many to collect amongst them a degree of impressive force sufficient to operate upon the ruling powers with effect. On the part of the many, the natural interest being in each case commonly but weak, it requires to bring it into effective action whatsoever aids can be afforded it. Strong arguments, how strong soever, will of themselves be scarcely sufficient; for at the utmost they can amount to no more than the indication of that interest, which, in the case of the greater part of the many whose force it is necessary to bring to bear upon the point in question, is by the supposition but weak. In aid of the utmost strength of which the argument is susceptible, strength of expression will therefore be necessary, or at least naturally and generally regarded as necessary, and as such employed. But in proportion as this strength of expression is employed, the mode of application stands exposed to the imputation of that heat, and violence, and acrimony, the use of which it is the object of the alleged fallacy to prevent.

4. It is only on the supposition of its being in effect, and being felt to be, conducive, or at least not repugnant, to the interest of the ruling powers addressed, that the simple statement of the considerations which, in the character of reasons, prove the existence of the supposed imperfection, and, if a remedy be proposed, the aptitude of the proposed remedy, can with reason be expected to operate on them with effect. But the fact is, that on the part of those ruling powers, this sort of repugnance, in a degree more or less considerable, is no other than what on every such occasion ought in reason to be expected. If the imperfection in question be of the nature of those to which the term *abuse* is wont to be applied, these ruling powers have some or all of them, by the supposition, a special profit arising out of that abuse — a special interest, consequently, in the preservation and defence of it. Even if there be no such special interest, there exists in that quarter at all times, and in more shapes than one, a general and constant interest by which they are rendered mutually averse to applications of that nature. In the first place, in addition to their ordinary labours, they find themselves called upon to undertake a course of extraordinary labour, which it was not their design to undertake, and for which it may happen to some or all of them to feel themselves but indifferently prepared and qualified; and thus the application itself finds itself opposed by the interest of their case. In the next place, to the extent of the task thus imposed upon them, they find the business of government taken out of their hands. To that same extent, their conduct is determined by a will which originated not among themselves; and if, the measure being carried into effect, the promoters of it would obtain reputation, respect, and affection, — of those rewards, a share more or less considerable

falls into other hands; and thus the application in question finds an opponent in the interest of their pride.

CHAPTER V.

ACCUSATION-SCARER'S DEVICE—(*ad metum.*)

"Infamy must attach somewhere."

Exposition. — This fallacy consists in representing the imputation of purposed calumny as necessarily and justly attaching upon him who, having made a charge of misconduct against any person or persons possessed of political power or influence, fails of producing evidence sufficient for conviction.

Its manifest object, accordingly, is, as far as possible, to secure impunity to crimes and transgressions in every shape, on the part of persons so situated; viz. by throwing impediments in the way of accusation, and in particular, by holding out to the eyes of those persons who have in view the undertaking the functions of accusers, in case of failure, in addition to disappointment, the prospect of disgrace.

Exposure. — "Infamy must attach somewhere." To this effect was a *dictum* ascribed in the debates to the Right Honourable George Canning, on the occasion of the inquiry into the conduct of the Duke of York in his office of Commander-in-Chief.

In principle, insinuation to this effect has an unlimited application: it applies not only to all charges against persons possessed of political power, but, with more or less force to all criminal charges in form of law against any persons whatsoever; and not only to all charges in a prosecution of the criminal cast, but to the litigants on both sides of the cause in a case of a purely non-penal, or, as it is called, a civil nature.

If taken as a general proposition applying to all public accusations, nothing can be more mischievous as well as fallacious. Supposing the charge unfounded, the delivery of it may have been accompanied with *mâla fides* (consciousness of its injustice,) *temerity* only, or it may have been perfectly blameless. It is in the first case alone that infamy can with propriety attach upon him who brings it forward. A charge really groundless may have been honestly *believed* to be well founded; *i. e.* believed with a sort of provisional credence, sufficient for the purpose of engaging a man to do his part towards the bringing about an investigation, but without sufficient reasons. But a charge may be perfectly groundless, without attaching the smallest particle of blame upon him who brings it forward. Suppose him to have heard from one or more, presenting themselves to him in the character of percipient witnesses, a story, which either *in toto*, or perhaps only in *circumstances*, though in circumstances of the most material importance, should prove false and mendacious, — how is the person who hears this, and acts accordingly, to blame? What sagacity can enable a man, previously to legal investigation—a man who has no power that can enable him to insure correctness or completeness on the part of this extra-judicial testimony—to guard against deception in such a case? Mrs. C. states to the accuser, that the Duke of York knew of the business; stating a conversation as having passed between him and herself on the occasion. All this (suppose) is perfectly false: but the falsity of it, how was it possible for one in the accuser's situation to be apprised of?

The tendency of this fallacy is, by intimidation to prevent all true charges whatever from being made, — to secure impunity to delinquency in every shape.

But the conclusion, that because the discourse of a witness is false in one particular, or on one occasion, it must therefore be false *in toto*, — in particular, that because it is false in respect of some fact or circumstance spoken to on some extra-judicial occasion, it is therefore not credible on the occasion of a judicial examination, — is a conclusion quite unwarranted.

If this argument were consistently and uniformly applied, no evidence at all ought ever to be received, or at least to be credited: for where was ever the human being, of full age, by whom the exact line of truth had never been in any instance departed from in the whole course of his life?

The fallacy consists, not in the bringing to view, as lessening the credit due to the testimony of the witness, this or that instance of falsehood, as indicated by inconsistency or counter-evidence, but in speaking of them as *conclusive*, and as warranting the turning a deaf ear to everything else the witness has said, or, if suffered, might have said. Under the pressure of some strong and manifest falsehood-exciting interest, suppose falsehood has been uttered by the witness: be it so; does it follow that falsehood will on every occasion — will on the particular occasion in question — be uttered by him without any such excitement?

Under the pressure of terror, the Apostle Peter, when questioned whether he were one of the adherents of Jesus, who at that time was in the situation of a prisoner just arrested on a capital charge, — denied his being so; and in so doing, uttered a wilful falsehood: and this falsehood he thrice repeated within a short time: — does it follow that the testimony of the Apostle ought not on any occasion to have been considered as capable of being true?

If any such rule were consistently pursued, what judge, who had ever acted in the pro-

fession of an advocate, could with propriety be received in the character of a witness?

Again, with respect to the object of the charge, so far from receiving less countenance where the object is a public than where he is a private man, accusation, whether it be at the bar of an official judicatory or at the bar of the public at large, ought to receive beyond comparison more countenance. In case of the truth of the accusation, the mischief is greater — the demand for appropriate censure as a check to it, correspondently greater. On the other hand, in case of non-delinquency, the mischief to the groundlessly-accused individual is less. Power, in whatever hands lodged, is almost sure to be more or less abused; the check, in all its shapes, so as it does not defeat the good purposes for which the power has been given or suffered to be exercised, can never be too strong. That against a man who, by the supposition, has done nothing wrong, it is not desirable, whether his situation be public or private, that accusation should have been preferred — that he should have been subjected to the danger, and alarm, and evil in other shapes attached to it, is almost too plainly true to be worth saying. But in the case of a public accusation, though by the supposition it turns out to be groundless, it is not altogether without its use — the evil produced is not altogether without compensation; for by the alarm it keeps up in the breasts in which a disposition to delinquency has place, such accusation acts as a check upon it, and contributes to the prevention or repression of it. On the other hand, in the situation of the public man, the mischief, in the case of his having been the object of an unfounded accusation, is less, as we have shown in the preceding chapter, than in the case of a private man. In the advantages that are attached to his situation, he possesses a fund of compensation, which, by the supposition, has no place in the other case: and apprised as he ought to be, and but for his own fault is, of the enmity and envy to which, according to the nature of it, his situation exposes him, and not the private man, he ought to be, and, but for his own fault, will be, proportionably prepared to expect it, and less sensibly affected by it when it comes.

PART III. FALLACIES OF DELAY,

THE SUBJECT-MATTER OF WHICH IS DELAY IN VARIOUS SHAPES — AND THE OBJECT, TO POSTPONE DISCUSSION, WITH A VIEW OF ELUDING IT.

CHAPTER I.

THE QUIETIST, OR "NO COMPLAINT" — (*ad quietem.*)

Exposition. — A new law or measure being proposed in the character of a remedy for some incontestable abuse or evil, an objection is frequently started, to the following effect: — "The measure is unnecessary; nobody complains of disorder in that shape in which it is the aim of your measure to propose a remedy to it: even when *no* cause of complaint has been found to exist, especially under governments which admit of complaints, men have in general not been slow to complain; much less where any just cause of complaint has existed." The argument amounts to this: — Nobody complains, therefore nobody suffers. It amounts to a *veto* on all measures of precaution or prevention, and goes to establish a maxim in legislation, directly opposed to the most ordinary prudence of common life; — it enjoins us to build no parapets to a bridge till the number of accidents has raised an universal clamour.

Exposure. — The argument would have more plausibility than it has, if there were any chance of complaints being attended to — if the silence of those who suffer did not arise from despair, occasioned by seeing the fruitlessness of former complaints. The expense and vexation of collecting and addressing complaints to parliament being great and certain, complaint will not commonly be made without adequate expectation of relief. But how can any such expectation be entertained by any one who is in the slightest degree acquainted with the present constitution of parliament? Members who are independent of and irresponsible to the people, can have very few and very slight motives for attending to complaints, the redress of which would affect their own sinister interests. Again, how many complaints are repressed by the fear of attacking powerful individuals, and incurring resentments which may prove fatal to the complainant!

The most galling and the most oppressive of all grievances is that complicated mass of evil which is composed of the uncertainty, delay, expense, and vexation in the administration of justice: of this, all but a comparatively minute proportion is clearly factitious*

* See Scotch Reform, in Vol. V.

— factitious, as being the work, originally and in its foundation, of the man of law; latterly, and in respect of a part of its superstructure, of the man of finance. In extent, it is such, that of the whole population there exists not an individual who is not every moment of his life exposed to suffer under it: and few advanced in life, who, in some shape or other, have not actually been sufferers from it. By the price that has been put upon justice, or what goes by the name of justice, a vast majority of the people, to some such amount as 9-10ths or 19-20ths, are bereft altogether of the ability of putting in for a chance for it; and to those to whom, instead of being utterly denied this sort of chance, is sold, it is sold at such a price, as, to the poorest of such as have it still in their power to pay, the price is utter ruin — and even to the richest, matter of serious and sensible inconvenience.

In comparison of this one scourge, all other political scourges put together are feathers: and in so far as it has the operations of the man of finance for its cause, if, instead of one-tenth upon income, a property tax amounted to nine-tenths, still an addition to the property tax would, in comparison of the affliction produced by the sum assessed on law-proceedings, be a relief: for the income-tax falls upon none but the comparatively prosperous, and increases in proportion to the prosperity — in proportion to the ability to sustain it; whereas the tax upon law-proceedings falls exclusively upon those whom it finds labouring under affliction—under that sort of affliction which, so long as it lasts, operates as a perpetual blister on the mind.

Here, then, is matter of complaint for every British subject that breathes — here, injustice, oppression, and distress are all extreme: complaint there is none. Why? Because, by unity of sinister interest, and consequent confederacy between lawyer and financier, relief is rendered hopeless.

CHAPTER II.

FALLACY OF FALSE CONSOLATION — *(ad quietem.)*

Exposition.—A measure having for its object the removal of some abuse, *i. e.* of some practice, the result of which is, on the part of the many, a mass of suffering more than equivalent to the harvest of enjoyment reaped from it by the few, being proposed, — this argument consists in pointing to the general condition of the people in this or that other country, under the notion, that in that other country, either in the particular respect in question, or upon the whole, the condition of the people is not so felicitous as, notwithstanding the abuse, it is in the country in and for which the measure of reform is proposed.

"What is the matter with you?" "What would you have?" Look at the people there, and there: think how much better off *you* are than *they* are. Your prosperity and liberty are objects of envy to them; — your institutions are the models which they endeavour to imitate.

Assuredly, it is not to the disposition to keep an eye of preference turned to the bright side of things, where no prospect of special good suggests the opposite course, — it is not to such a disposition or such a habit, that by the word *fallacy* it is proposed to affix a mark of disapprobation.

When a particular suffering, produced as it appears by an assignable and assigned cause, has been pointed out as existing, a man, instead of attending to it himself, or inviting to it the attention of others, employs his exertions in the endeavour to engage other eyes to turn themselves to any other quarter in preference (he being of the number of those whose acknowledged duty it is to contribute their best endeavours to the affording to every affliction within their view, whatsoever relief may be capable of being afforded to it without preponderant inconvenience)—then, and then only, is it, that the endeavour becomes a just ground for censure, and the means thus employed present a title to be received upon the list of *fallacies*.

Exposure.—The pravity as well as fallaciousness of this argument can scarcely be exhibited in a stronger or truer light than by the appellation here employed to characterize it.

1. Like all other fallacies upon this list, it is nothing to the purpose.

2. In his own case, no individual in his senses would accept it. Take any one of the orators by whom this argument is tendered, or of the sages on whom it passes for sterling: with an observation of the general wealth and prosperity of the country in his mouth, instead of a half-year's rent in his hand, let any one of his tenants propose to pay him thus in his own coin, — will he accept it?

3. In a court of justice, in an action for damages, — to learned ingenuity did ever any such device occur as that of pleading assets in the hand of a third person, or in the hands of the whole country, in bar to the demand? What the largest wholesale trade is to the smallest retail, such, and more in point of magnitude, is the relief commonly sought for at the hands of the legislator, to the relief commonly sought for at the hands of the judge: — what the largest wholesale trade is to the smallest retail trade, such in point of magnitude, yea and more, is the injustice endeavoured at by this argument when employed in the seat of legislative power, in

comparison of the injustice that would be committed by deciding in conformity to it in a court of justice.

No country so wretched, so poor in every element of prosperity, in which matter for this argument might not be found.

Were the prosperity of the country ever so much greater than at present — take for the country any country whatsoever, and for present time any time whatsoever — neither the injustice of the argument, nor the absurdity of it, would in any the smallest degree be diminished.

Seriously and pointedly, in the character of a bar to any measure of relief — no, nor to the most trivial improvement, can it ever be employed. Suppose a bill brought in for converting an impassable road anywhere into a passable one, would any man stand up to oppose it who could find nothing better to urge against it than the multitude and goodness of the roads we have already? No: when in the character of a serious bar to the measure in hand, be that measure what it may, an argument so palpably inapplicable is employed, it can only be for the purpose of creating a diversion — of turning aside the minds of men from the subject really in hand, to a picture which by its beauty it is hoped, may engross the attention of the assembly, and make them forget for the moment for what purpose they came there.

CHAPTER III.

PROCRASTINATOR'S ARGUMENT
(*ad socordiam.*)

"Wait a little, this is not the time."

Exposition. — To the instrument of deception here brought to view, the expressions that may be given are various to an indefinite degree; but in its nature and conception nothing can be more simple.

To this head belongs every form of words by which, speaking of a proposed measure of relief, an intimation is given, that the time, whatever it be, at which the proposal is made, is too early for the purpose; and given without any proof being offered of the truth of such intimation, — such as, for instance, the want of requisite information, or the convenience of some preparatory measure.

Exposure. — This is the sort of argument or observation which we so often see employed by those who, being in wish and endeavour hostile to a measure, are afraid or ashamed of being seen to be so. They pretend, perhaps, to approve of the measure — they only differ as to the proper time of bringing it forward; but it may be matter of question whether, in any one instance, this observation has been applied to a measure by a man whose wish it was not, that it should remain excluded for ever.

It is in legislation the same sort of quirk, which in judicial procedure is called a plea in abatement. It has the same object, being never employed but on the side of a dishonest defendant, whose hope it is to obtain ultimate impunity and triumph by overwhelming his injured adversary with despair, impoverishment, and lassitude.

A serious refutation would be ill bestowed upon so frivolous a pretence. The objection exists in the will, not in the judgment, of the objector. "Is it lawful to do good on the sabbath day?" was the question put by Jesus to the official hypocrites. Which is the properest day to do good? — which is the properest day to remove a nuisance? Answer: The very first day that a man can be found to propose the removal of it; and whosoever opposes the removal of it on that day, will, if he dare, oppose the removal on every other.

The doubts and fears of the parliamentary procrastinator are the conscientious scruples of his prototype the Phariseee; and neither the answer nor the example of Jesus has succeeded in removing these scruples. To him, whatsoever is too soon to-day, be assured that to-morrow, if not too soon, it will be too late.

True it is, that, the measure being a measure of reform or improvement, an observation to this effect may be brought forward by a friend to the measure: and in this case, it is not an instrument of deception, but an expedient of unhappily necessary prudence.

Whatsoever it may be some centuries hence, hitherto the fault of the people has been, not groundless clamour against imaginary grievances, but insensibility to real ones, — insensibility, not to the effect — the evil itself, for that, if it were possible, far from being a fault, would be a happiness, — but to the cause—to the system or course of misrule which is the cause of it.

What, therefore, may but too easily be — what hitherto ever has been — the fact, and that throughout a vast proportion of the field of legislation, is, that in regard to the grievances complained of, the time for bringing forward a measure of effectual relief is not yet come. Why? Because, though groaning under the effect, the people, by the artifice and hypocrisy of their oppressors having been prevented from entertaining any tolerably adequate conception of the cause, would at that time regard either with indifference or with suspicion the healing hand that should come forward with the only true and effectual remedy. Thus it is, for example, with that Pandora's box of grievances and misery, the contents of which are composed of the evils opposite to the ends of justice.

CHAPTER IV.

SNAIL'S-PACE ARGUMENT. — (*ad socordiam.*)

"One thing at a time! Not too fast! Slow and sure!"

Exposition. — The proposed measure being a measure of reform, requiring, that for the completion of the beneficial work in question a number of operations be performed, capable, all or some of them, of being carried on at the same time, or successively without intervals, or at short intervals, the instrument of deception here in question consists in holding up to view the idea of graduality or slowness, as characteristic of the course which wisdom would dictate on the occasion in question. For more effectual recommendation of this course, to the epithet *gradual* are commonly added some such eulogistic epithets as *moderate* and *temperate;* whereby it is implied, that in proportion as the pace recommended by the word *gradual* is quickened, such increased pace will justly incur the censure expressed by the opposite epithets, immoderate, violent, precipitate, extravagant, intemperate.

Exposure. — This is neither more nor less than a contrivance for making out of a mere word an excuse for leaving undone an indefinite multitude of things, which the arguer is convinced, and cannot forbear acknowledging, ought to be done.

Suppose half a dozen abuses, which equally and with equal promptitude stand in need of reform — this fallacy requires, that without any reason that can be assigned, other than what is contained in the pronouncing or writing of the word *gradual*, all but one or two of them shall remain untouched.

Or, what is better, suppose that, to the effectual correction of some one of these abuses, six operations require to be performed — six operations, all of which must be done ere the correction can be effected, — to save the reform from the reproach of being violent and intemperate, to secure to it the praise of graduality, moderation, and temperance, you insist, that of these half-a-dozen necessary operations, some one or some two only shall be talked of, and proposed to be done; — one, by one bill to be introduced this session, if it be not too late (which you contrive it shall be;) another, the next session; which time being come, nothing more is to be said about the matter — and there it ends.

For this abandonment, no one reason that will bear looking at can be numbered up, in the instance of any one of the five measures endeavoured to be laid upon the shelf; for if it could, that would be the reason assigned for the relinquishment, and not this unmeaning assemblage of three syllables.

A suit which, to do full justice to it, requires but six weeks, or six days, or six minutes in one day — has it been made to last six years? That your caution and your wisdom may not be questioned, by a first experiment reduce the time to five years; then if that succeeds, in another parliament, should another parliament be in a humour (which it is hoped it will not,) reduce it to four years; then again to three years; and if it should be the lot of your grandchildren to see it reduced to two years, they may think themselves well off, and admire your prudence.

Justice — to which in every eye but that of the plunderer and oppressor, rich and poor have an equal right — do nine-tenths of the people stand excluded from all hope of, by the load of expense that has been heaped up. You propose to reduce this expense. The extent of the evil is admitted, and the nature of the remedy cannot admit of doubt; but by the magic of the three syllables *gra-du-al*, you will limit the remedy to the reduction of about one-tenth of the expense. Some time afterwards you may reduce another tenth, and go on so, that in about two centuries, justice may, perhaps, become generally accessible.

Importance of the business — extreme difficulty of the business — danger of innovation — need of caution and circumspection — impossibility of foreseeing all consequences — danger of precipitation — everything should be gradual — one thing at a time — this is not the time — great occupation at present — wait for more leisure — people well satisfied — no petitions presented — no complaints heard — no such mischief has yet taken place — stay till it has taken place: — such is the prattle which the magpie in office, who, understanding nothing, understands that he must have something to say on every subject, shouts out among his auditors as a succedaneum to thought.

Transfer the scene to domestic life, and suppose a man who, his fortune not enabling him without running into debt to keep one race-horse, has been for some time in the habit of keeping six: to transfer to this private theatre the wisdom and the benefit of the gradual system, what you would have to recommend to your friend would be something of this sort: — Spend the first year in considering which of your six horses to give up; the next year, if you can satisfy yourself which it shall be, give up some one of them: by this sacrifice, the sincerity of your intention and your reputation for economy will be established; which done, you need think no more about the matter.

As all psychological ideas have their necessary root in physical ones, one source of delusion in psychological arguments consists in giving an improper extension to some metaphor which has been made choice of.

It would be a service done to the cause of truth, if some advocate for the gradual system would let us into the secret of the metaphor or physical image, if any, which he has in view, and in the same language give us the idea of some physical disaster as the result of precipitation. A patient killed by rapid bleeding — a chariot dashed in pieces by runaway steeds — a vessel overset by carrying too much sail in a squall, — all these images suppose a degree of precipitation which, if pursued by the proposers of a political measure, would be at once apparent, and the obvious and assignable consequence of their course would afford unanswerable arguments against them.

All this while, though by a friend to the measure no such word as above will be employed in the character of argument, yet cases are not wanting in which the dilatory course recommended may be consented to, or even proposed by him.

Suppose a dozen distinct abuses in the seat of legislative power, each abuse having a set of members interested in the support of it, — attack the whole body at once, all these parties join together to a certainty, and oppose you with their united force. Attack the abuses one by one, and it is possible that you may have but one of these parties, or at least less than all of them, to cope with at a time. Possible? Yes: but of probability, little can be said. To each branch of the public service belongs a class of public servants, each of which has its sinister interest, the source of the mass of abuses on which it feeds; and in the person and power of the universal patron, the fountain of all honour and of all abuse, all those sinister interests are joined and embodied into one.

This is a branch of science in which no man is ever deficient; this is what is understood — understood to perfection, by him to whom nothing else ever was or can be clear, — *Hoc discunt omnes*, unto *alpha et beta puelli*.

If there be a case in which such graduality as is here described can have been consented to, and with a reasonable prospect of advantage, it must have been a case in which, without such consent, the whole business would be hopeless.

Under the existing system, by which the door of the theatre of legislation is opened by opulence to members in whose instance application of the faculty of thought to the business about which they are supposed to occupy themselves would have been an effect without a cause, so gross is the ignorance, and in consequence, even where good intention is not altogether wanting, so extreme the timidity and apprehension, that on their part, without assurance of extreme slowness, no concurrence to a proposal for setting one foot before another, at even the slowest pace, would be obtained at all; their pace, the only pace at which they can be persuaded to move, is that which the traveller would take, whose lot it should be to be travelling in a pitch-dark night over a road broken and slippery, edged with precipices on each side. Time is requisite for quieting timidity: why? Because time is requisite for instructing ignorance.

§ 1. *Lawyers; their interest in the employment of this fallacy.*

In proportion to the magnitude of their respective shares in the general fund of abuse, the various fraternities interested in the support of abuses have each of them their interest in turning to the best account this as well as every other article in the list of fallacies.

But it is the fraternity of lawyers, who (if they have not decidedly the most to gain by the dexterous management of this or of other fallacies) have, from the greatest quantity of practice, derived the greatest degree of dexterity in the management of it.

Judicature requiring reflection, and the greater the complication of the case, the greater the degree and length of reflection which the case requires: under favour of this association, they have succeeded in establishing a general impression of a sort of proportion in quantity, as well as necessity of connexion, between delay and attention to justice. Not that, in fact, a hundredth part of the established delay has had any origin in a regard for justice; but — for want of sufficient insight into that state of things by which, in persons so circumstanced in power and interest, the general prevalence of any such regard has been rendered physically impossible — in his endeavours to propagate the notion of a sort of general proportion between delay and regard for justice, the man of law has, unhappily, been but too successful. And it is, perhaps, to this error in respect to matters of fact, that the snail's-pace fallacy is indebted, more than to any other cause, for its dupes. Be this as it may, sure it is, that in no track of reform has the rate of progress which it is the object of this fallacy to secure, been adhered to with greater effect. By the statute-book, if run over (and little more than the titles would be necessary) in this view, a curious exemplification of the truth of this observation is afforded. An abuse so monstrous, that, on the part of the judicial hands by which it was manufactured, the slightest doubt of the mischievousness of it was absolutely impossible; — generation after generation groaning under this abuse; — and at length, when, by causes kept of course as much as possible out of sight, the support of the abuse has been deemed no longer practi-

cable, comes at length a remedy. And what remedy? Never anything better than a feeble palliative.

CHAPTER V.

FALLACY OF ARTFUL DIVERSION — (*ad verecundiam.*)

Exposition and Exposure. — The device here in question may be explained by the following direction or receipt for the manufacture and application of it: —

When any measure is proposed, which on any account whatsoever it suits your interest or your humour to oppose, at the same time that, in consideration of its undeniable utility, or on any other account, you regard it unadvisable to pass direct condemnation on it, — hold up to view some other measure, such as, whether it bear any relation or none to the measure on the carpet, will, in the conception of your hearers, present itself as superior in the order of importance. Your language then is, — Why that? (meaning the measure already proposed) — why not this? or this? mentioning some other, which it is your hope to render more acceptable, and by means of it to create a diversion, and turn aside from the obnoxious measure the affections and attention of those whom you have to deal with.

One case there is, in which the appellation of fallacy cannot with justice be applied to this argument; and that is, where the effectuation or pursuit of the measure first proposed would operate as a bar or an obstacle to some other measure of a more beneficial character held up to view by the argument as competitor with it: and what, in the way of Exposure, will be said of the sort of expedient just described, will not apply to this case.

However, where the measure first proposed is of unquestionable utility, and you oppose it merely because it is adverse to your own sinister interest, you must not suggest any relevant measure of reform in lieu of it, except in a case in which, in the shape of argument, every mode of opposition is considered as hopeless; for unless for the purpose of forestalling the time and attention that would be necessary to the effectuation of the proposed beneficial measure, a measure altogether irrelevant and foreign to it is set up, a risk is incurred, that something, however inferior in degree, may be effected towards the diminution of the abuse or imperfection in question.

In the character of an irrelevant counter-measure, any measure or accidental business whatever may be made to serve, so long as it can be made to pre-occupy a sufficient portion of the disposable time and attention of the public men on whose suffrages the effectuation or frustration of the measure depends.

But supposing the necessity for a relevant counter-measure to exist, and that you have accordingly given introduction to it, the first thing then to be done is, to stave off the undesirable moment of its effectuation as long as possible.

According to established usage, you have given notice of your intention to propose a measure on the subject and to the effect in question. The intention is of too great importance to be framed and carried into act in the compass of the same year or session: you accordingly announce your intention for next session. When the next session comes, the measure is of too great importance to be brought on the carpet at the commencement of the session; at that period it is not yet mature enough. If it be not advisable to delay it any longer, you bring it forward just as the session closes. Time is thus gained, and without any decided loss in the shape of reputation; for what you undertook, has to the letter been performed. When the measure has been once brought in, you have to take your choice, in the first place, between operations for delay and operations for rejection. Operations for delay exhibit a manifest title to preference: so long as their effect can be made to last, they accomplish their object, and no sacrifice either of design or of reputation has been made. The extreme importance and extreme difficulty are themes on which you blow the trumpet, and which you need not fear the not hearing sufficiently echoed. When the treasury of delay has been exhausted, you have your choice to take between trusting to the chapter of accidents for the defeat of the measure, or endeavouring to engage some friend to oppose it, and propose the rejection of it. But you must be unfortunate indeed, if you can find no opponents, no tolerably plausible opponents, unless among friends, and friends specially commissioned for the purpose: a sort of confidence more or less dangerous must in that case be reposed.

Upon the whole, you must however be singularly unfortunate or unskilful, if by the counter-measure of diversion any considerable reduction of the abuse or imperfection be, spite of your utmost endeavours, effected, or any share of reputation that you need care about sacrificed.

PART IV. FALLACIES OF CONFUSION,

THE OBJECT OF WHICH IS, TO PERPLEX, WHEN DISCUSSION CAN NO LONGER BE AVOIDED.

CHAPTER I.

QUESTION-BEGGING APPELLATIVES — (*ad judicium.*)

Petitio principii, or begging the question, is a fallacy very well known even to those who are not conversant with the principles of logic. In answer to a given question, the party who employs the fallacy contents himself by simply affirming the point in debate. Why does opium occasion sleep? Because it is soporiferous.

Begging the question is one of the fallacies enumerated by Aristotle; but Aristotle has not pointed out (what it will be the object of this chapter to expose) the mode of using the fallacy with the greatest effect, and least risk of detection, — namely, by the employment of a single appellative.

Exposition and Exposure. — Among the appellatives employed for the designation of objects belonging to the field of moral science, there are some by which the object is presented singly, unaccompanied by any sentiment of approbation or disapprobation attached to it — as, *desire*, *labour*, *disposition*, *character*, *habit*, &c. With reference to the two sorts of appellatives which will come immediately to be mentioned, appellatives of this sort may be termed *neutral*.

There are others, by means of which, in addition to the principal object, the idea of general approbation as habitually attached to that object is presented — as, *industry*, *honour*, *piety*, *generosity*, *gratitude*, &c. These are termed *eulogistic* or laudatory.

Others there are, again, by means of which, in addition to the principal object, the idea of general disapprobation, as habitually attached to that object, is presented — as, *lust*, *avarice*, *luxury*, *covetousness*, *prodigality*, &c. These may be termed *dyslogistic* or vituperative.*

Among pains, pleasures, desires, emotions, motives, affections, propensities, dispositions, and other moral entities, some, but very far from all, are furnished with appellatives of all three sorts: — some, with none but eulogistic; others, and in a greater number, with none but those of the dyslogistic cast. By appellatives, I mean here, of course, *single-worded* appellatives; for by words, take but enough of them, anything may be expressed.

Originally, all terms expressive of any of these objects were (it seems reasonable to think) neutral. By degrees they acquired, some of them an eulogistic, some a dyslogistic, cast. This change extended itself, as the *moral sense* (if so loose and delusive a term may on this occasion be employed) advanced in growth.

But to return. As to the mode of employing this fallacy, it neither requires nor so much as admits of being taught: a man falls into it but too naturally of himself; and the more naturally and freely, the less he finds himself under the restraint of any such sense as that of shame. The great difficulty is to unlearn it: in the case of this, as of so many other fallacies, by teaching it, the humble endeavour here is, to unteach it.

In speaking of the *conduct*, the *behaviour*, the *intention*, the *motive*, the *disposition* of this or that man, — if he be one who is indifferent to you, of whom you care not whether he be well or ill thought of, you employ the *neutral* term: — if a man whom, on the occasion and for the purpose in question, it is your object to recommend to favour, especially a man of your own party, you employ the *eulogistic* term: — if he be a man whom it is your object to consign to aversion or contempt, you employ the *dyslogistic* term.

To the proposition of which it is the leading term, every such eulogistic or dyslogistic appellative, secretly, as it were, and in general insensibly, slips in another proposition of which that same leading term is the subject, and an assertion of approbation or disapprobation the predicate. The person, act, or thing in question, is *or* deserves to be, or is *and* deserves to be, an object of general approbation; or the person, act, or thing in question, is or deserves to be, or is and deserves to be, an object of general disapprobation.

The proposition thus asserted is commonly a proposition that requires to be proved. But in the case where the use of the term thus employed is fallacious, the proposition is one

* See the nature of these denominations amply illustrated in *Springs-of-Action Table*, in Vol. I.

Of the field of thought and action, this, the moral department, though it be that part in which the most abundant employment is given to the instrument of deception here in question, is not the only part. Scarcely, perhaps, can any part be found, to which it has not been applied.

that is not true, and cannot be proved: and where the person by whom the fallacy is employed is conscious of its deceptive tendency, the object in the employment thus given to the appellative is, by means of the artifice, to cause that to be taken for true, which is not so.

By appropriate eulogistic and dyslogistic terms, so many arguments are made, by which, taking them altogether, misrule, in all its several departments, finds its justifying arguments, and these in but too many eyes, conclusive. Take, for instance, the following eulogistic terms: —

1. In the war department, — *honour* and *glory*.

2. In international affairs, — *honour*, *glory*, and *dignity*.

3. In the financial department, *liberality*. It being always at the expense of unwilling contributors that this *virtue* (for among the *virtues* it has its place in *Aristotle*) is exercised—for *liberality*, *depredation* may, in perhaps every case, and without any impropriety, be substituted.

4. In the higher parts of all official departments, *dignity* — *dignity*, though not in itself depredation, operates as often as the word is used, as a pretence for, and thence as a cause of depredation. Wherever you see *dignity*, be sure that money is requisite for the *support* of it: and that, in so far as the dignitary's own money is regarded as insufficient, public money, raised by taxes imposed on all other individuals, on the principle of *liberality*, must be found for the supply of it.*

Exercised at a man's own expense, liberality may be, or may not be, according to circumstances, a virtue: — exercised at the expense of the public, it never can be anything better than vice. Exercised at a man's own expense, whether it be accompanied with prudence or no — whether it be accompanied or not with beneficence, it is at any rate disinterestedness: — exercised at the expense of the public, it is pure selfishness: it is, in a word, depredation: money or money's worth is taken from the public to purchase, for the use of the liberal man, respect, affection, gratitude, with its eventual fruits in the shape of services of all sorts — in a word, reputation, power.

When you have a practice or measure to condemn, find out some more general appellative, within the import of which the obnoxious practice or measure in question cannot be denied to be included, and to which you, or those whose interests and prejudices you have espoused, have contrived to annex a certain degree of unpopularity, in so much that the name of it has contracted a dyslogistic quality — has become a bad name.

Take, for example, *improvement* and *innovation*: under its own name to pass censure on any improvement might be too bold: applied to such an object, any expressions of censure you could employ might lose their force; employing them, you would seem to be running on in the track of self-contradiction and nonsense.

But improvement means something new, and so does *innovation*. Happily for your purpose, *innovation* has contracted a bad sense; it means something which is new and bad at the same time. Improvement, it is true, in indicating something new, indicates something good at the same time; and therefore, if the thing in question be good as well as new, innovation is not a proper term for it. However, as the idea of *novelty* was the only idea originally attached to the term innovation, and the only one which is directly expressed in the etymology of it, you may still venture to employ the word innovation, since no man can readily and immediately convict your appellation of being an improper one upon the face of it.

With the appellation thus chosen for the purpose of passing condemnation on the measure, he by whom it has been brought to view in the character of an improvement, is not (it is true) very likely to be well satisfied: but of this you could not have had any expectation. What you want is a pretence which your own partisans can lay hold of, for the purpose of deducing from it a colourable warrant for passing upon the improvement that censure which you are determined, and they, if not determined, are disposed and intend to pass on it.

Of this instrument of deception, the potency is most deplorable. It is but of late years that so much as the nature of it has in any way been laid before the public: and now that it has been laid before the public, the need there is of its being opposed with effect, and the extreme difficulty of opposing it with effect, are at the same time and in equal degree manifest. In every part of the field of thought and discourse, the effect of language depends upon the principle of association — upon the association formed between words, and those ideas of which, in that way, they have become the signs. But in no small part of the field of discourse, one or other of the two censorial and reciprocally correspondent and opposite affections — the amicable and the hostile — that by which approbation, and that by which disapprobation, is expressed — are associated with the word in question by a tie little less strong than that by which the object in question, be it person or thing — be the thing a real or fictitious entity — be it operation or quality, is associated with that

* See this principle avowed and maintained by the scribes of both parties, Burke and Rose, as shown in the *Defences of Economy* against those advocates of depredation, — in Vol. V.

same articulate audible sign and its visible representations.

To diminish the effect of this instrument of deception (for to do it away completely, to render all minds, without exception, at all times insensible to it, seems scarcely possible) must, at any rate, be a work of time. But in proportion as its effect on the understanding, and through that channel on the temper and conduct of mankind, is diminished, the good effect of the exposure will become manifest.

By such of these passion-kindling appellatives as are of the eulogistic cast, comparatively speaking, no bad effect is produced: but by those which are of the dyslogistic, prodigious is the mischievous effect produced, considered in a moral point of view. By a single word or two of this complexion, what hostility has been produced! how intense the feeling of it! how wide the range of it! how full of mischief, in all imaginable shapes, the effects!*

CHAPTER II.

IMPOSTOR TERMS — (*ad judicium.*)

Exposition. — The fallacy which consists in the employment of impostor terms, in some respects resembles that which has been exposed in the preceding chapter; but it is applied chiefly to the defence of things, which under their proper name are manifestly indefensible. Instead, therefore, of speaking of such things under their proper name, the sophist has recourse to some appellative, which, along with the indefensible object, includes some other — generally an object of favour; or at once substitutes an object of approbation for an object of censure. For instance, persecutors in matters of religion have no such word as persecution in their vocabulary: *zeal* is the word by which they characterize all their actions.

In the employment of this fallacy, two things are requisite: —

1. A fact or circumstance, which, under its proper name, and seen in its true colours, would be an object of censure, and which, therefore, it is necessary to disguise: — (*res tegenda.*)

2. The appellative which the sophist employs to conceal what would be deemed offensive, or even to bespeak a degree of favour for it by the aid of some happier accessary: — (*tegumen.*)†

Exposure. — Example: *Influence of the Crown.* — The sinister influence of the crown is an object which, if expressed by any peculiar and distinctive appellation, would, comparatively speaking, find perhaps but few defenders; but which, so long as no other denomination is employed for the designation of it than the generic term *influence*, will rarely meet with indiscriminating reprobation.

Corruption, — the term which, in the eyes of those to whom this species of influence is an object of disapprobation, is the appropriate and only single-worded term capable of being

* As an instance remarkable enough, though not in respect of the mischievousness, yet in respect of the extent and the importance of the effects producible by a single word, note Lord Erskine's defence of the Whigs, avowedly produced by the application of the dyslogistic word *faction* to that party in the state.

† The device here in question is not peculiar to politicians. By an example drawn from private life, it may to some eyes be placed, perhaps, in a clearer point of view. The word *gallantry* is employed to denote either of two dispositions, which, though not altogether without connexion, may either of them exist without the other. In one of these senses, it denotes, on the part of the stronger sex, the disposition to testify on all occasions towards the weaker sex those sentiments of respect and kindness by which civilized is so strikingly and happily distinguished from savage life. In the other sense, it is, in the main, synonymous to *adultery*: yet not so completely synonymous (as indeed words perfectly synonymous are of rare occurrence) but that, in addition to this sense, it presents an accessary and collateral one. Having, from the habit of being employed in the other sense, acquired, in addition to its direct sense, a collateral sense of the eulogistic cast, it serves to give to the act, habit, or disposition, which in this sense it is employed to present, something of an eulogistic tincture, in lieu of that dyslogystic colouring under which the object is presented by its direct and proper name. Whatever act a man regards himself as being known to have performed, or meditates the performance of, under any expectation of his being eventually known to have performed it, he will not, in speaking of it, make use of any term the tendency of which is to call forth, on the part of the hearer or reader, any sentiment of disapprobation pointed at the sort of act in question, and consequently, through the medium of the act, at the agent by whom it has been performed. To the word *adultery*, this effect, to every man more or less unpleasant, is attached by the usage of language. On every occasion in which it is necessary to his purpose to bring to view an act of this obnoxious description, he will naturally be on the look-out for a term in the use of which he may be supposed to have had another meaning, and which, in so far as it conveys an idea of the forbidden act in question, presents it with an accompaniment, not of reproach, but rather of approbation, which in general would not have accompanied it but for the other signification which the word is also employed to designate. This term he finds in the word *gallantry*.

There is a sort of man, who, whether ready or no to commit any act or acts of adultery, would gladly be thought to have been habituated to the commission of such acts: but even this sort of man would neither be found to say of himself, "I am an adulterer," nor pleased to have it said of him, "He is an adulterer." But to have it said of him that he is a man of gallantry, — this is what the sort of man in question would regard as a compliment, with the sound of which he would be pleased and flattered.

employed for the expression of it — is a term of the *dyslogistic* cast. This, then, by any person whose meaning it is not to join in the condemnation passed on the practice or state of things which is designated, is one that cannot possibly be employed. In speaking of this practice and state of things, he is therefore obliged to go upon the look-out, and find some term, which, at the same time that its claim to the capacity of presenting to view the object in question cannot be contested, shall be of the eulogistic or at least of the neutral cast; and to one or other of these classes belongs the term *influence*.

Under the term *influence*, when the crown is considered as the possessor of it, are included two species of influence: the one of them such, that the removal of it could not, without an utter reprobation of the monarchical form of government, be by any person considered as desirable, nor, without the utter destruction of monarchical government, be considered as possible;—the other such—that in the opinion of many persons, the complete destruction or removal of it would, if possible, be desirable, — and that, though consistently with the continuance of the monarchical government, the complete removal of it would not be practicable, yet the diminution of it to such a degree as that the remainder should not be productive of any practically pernicious effects would not be impracticable.

Influence of *will on will* — influence of *understanding on understanding*: in this may be seen the distinction on which the utility or noxiousness of the sort of influence in question depends.

In the influence of understanding on understanding, may be seen that influence to which, by whomsoever exercised, on whomsoever exercised, and on what occasion soever exercised, the freest range ought to be left — left, although, as for instance, exercised by the crown, and on the representatives of the people. Not that to this influence it may not happen to be productive of mischief to any amount; but that because without this influence scarce any good could be accomplished, and because, when it is left free, disorder cannot present itself without leaving the door open at least for the entrance of the remedy.

The influence of understanding on understanding is, in a word, no other than the influence of human reason — a guide which, like other guides, is liable to miss its way, or dishonestly to recommend a wrong course, but which is the only guide of which the nature of the case is susceptible.

Under the British constitution, to the crown belongs either the sole management, or a principal and leading part of the management of the public business: and it is only by the influence of understanding on understanding, or by the influence of will on will, that by any person or persons, except by physical force immediately applied, anything can be done.

To the execution of the ordinary mass of duties belonging to the crown, the influence of will on will, so long as the persons on whom it is exercised are the proper persons, is necessary. On all persons to whom it belongs to the crown to give *orders*, this species of influence is necessary; for it is only in virtue of this species of influence that *orders*, considered as delivered from a superordinate to a subordinate — considered in a word as *orders*, in contradistinction to mere suggestions, or arguments operating by the influence of understanding on understanding, — can be productive of any effect.

Thus far, then, in the case of influence of will on will, as well as in the case of influence of understanding on understanding, no rational and consistent objection can be made to the use of influence. In either case, its title to the epithet *legitimate* influence is above dispute.

The case, among others, in which the title of the influence of the crown is open to dispute — the case in which the epithet *sinister*, or any other mark of disapprobation, may be bestowed upon it (bestowed upon the bare possession, and without need of reference to the particular use and application which on any particular occasion may happen to be made of it,) — is that where, being of that sort which is exercised by will on will, the person on whom on the occasion in question it is exercised, is either a member of parliament, or a person possessed of an electoral vote with reference to a seat in parliament.

The ground on which this species of influence thus exercised is, by those by whom it is spoken of with disapprobation, represented as *sinister*, and deserving of that disapprobation, is simply this: — viz. that in so far as this influence is efficient, the will professed to be pronounced is not in truth the will of him whose will it professes to be, but the will of him in whom the influence originates, and from whom it proceeds: in so much, that if, for example, every member of parliament without exception were in each house under the dominion of the influence of the crown, and in every individual instance that influence were effectual, — the monarchy, instead of being the limited sort of monarchy it professes to be, would be in effect an absolute one — in form alone a limited one; nor so much as in form a limited one any longer than it happened to be the pleasure of the monarch that it should continue to be so.

The functions attached to the situation of a member of parliament may be included, most or all of them, under three denominations — the legislative, the judicial, and the

inquisitorial: the legislative, in virtue of which, in each House, each member that pleases takes a part in the making of laws; the judicial, which, whether penal cases or cases non-penal be considered, is not exercised to any considerable extent but by the House of Lords; and the inquisitorial, the exercise of which is performed by an inquiry into facts, with a view to the exercise either of legislative authority, or of judicial authority, or both, whichever the case may be found to require. To the exercise of either branch may be referred what is done, when, on the ground of some defect either in point of moral or intellectual fitness, or both, application is made by either house for the removal of any member or members of the executive branch of the official establishment — any servant or servants of the crown.

But, for argument's sake, suppose the abovementioned extreme case to be realized, all these functions are equally nugatory. Whatever law is acceptable to the crown, will be not only introduced but carried; no law that is not acceptable to the crown, will be so much as introduced: every judgment that is acceptable to the crown will be pronounced; no judgment that is not acceptable to the crown will be pronounced: every inquiry that is acceptable to the crown will be made; no inquiry that is not acceptable to the crown will be made: and in particular, let, on the part of the servants of the crown, any or all of them, misconduct in every imaginable shape be ever so enormous, no application that is not acceptable to the crown will ever be made for their removal; that is, no such application will ever be made at all: for in this state of things, supposing it, in the instance of any servant of the crown, to be the pleasure of the crown to remove him, he will be removed of course; nor can any such application be productive of anything better than needless loss of time.

Raised to the pitch supposed in this extreme case, there are not, it is supposed, many men in the country, by whom the influence of the crown, of that sort which is exercised by the will of the crown on the wills of members of parliament, would not be really regarded as coming under the denomination of sinister influence; not so much as a single one by whom its title to that denomination would be openly denied.

But among members of parliament, many there are on whom, beyond possibility of denial, this sort of influence — influence of will on will — is exerted: since no man can be in possession of any desirable situation from which he is removable, without its being exerted on him; say rather, without its exerting itself on him: for to the production of the full effect of influence, no act, no express intimation of will on the part of any person, is in any such situation necessary.

Here, then, comes the grand question in dispute. In some opinions, of that sort of influence of will on will, exercising itself from the crown on a member of parliament, or at any rate on a member of the House of Commons, composed of the elected representatives of the people, not any the least particle is necessary — not any the least particle is in any way beneficial — not any the least particle, in so far as it is operative, can be other than pernicious.

In the language of those by whom this opinion is held, every particle of such influence is sinister influence, corrupt or corruptive influence, or, in one word, corruption.

Others there are, in whose opinion, or at any rate, if not in their opinion, in whose language, of that influence thus actually exercising itself, the whole, or some part at any rate, is not only innoxious but beneficial, and not only beneficial but — to the maintenance of the constitution in a good and healthful state—absolutely necessary: and to this number must naturally be supposed to belong all those on whom this obnoxious species of influence is actually exercising itself.

CHAPTER III.

VAGUE GENERALITIES — (*ad judicium.*)

Exposition. — Vague generalities comprehend a numerous class of fallacies, resorted to by those who, in preference to the most particular and determinate terms and expressions which the nature of the case in question admits of, employ others more general and indeterminate.

An expression is vague and ambiguous when it designates, by one and the same appellative, an object which may be good or bad, according to circumstances; and if, in the course of an inquiry touching the qualities of such an object, such an expression is employed without a recognition of this distinction, the expression operates as a fallacy.

Take, for instance, the terms, *government*, *laws*, *morals*, *religion*. The *genus* comprehended in each of these terms may be divided into two species — the *good* and *bad;* for no one can deny that there have been and still are in the world, bad governments, bad laws, bad systems of morals, and bad religions. The bare circumstance, therefore, of a man's attacking government or law, morals or religion, does not of itself afford the slightest presumption that he is engaged in anything blameable: if his attack is only directed against that which is bad in each, his efforts may be productive of good to any extent.

This essential distinction the defender of abuse takes care to keep out of sight, and boldly imputes to his antagonist an intention to subvert all governments, laws, morals or religion.

But it is in the way of insinuation, rather than in the form of direct assertion, that the argument is in this case most commonly brought to bear. Propose anything with a view to the improvement of the existing practice in relation to government at large, to the law, or to religion, he will treat you with an oration on the utility and necessity of government, of law, or of religion. To what end? To the end that of your own accord you may draw the inference which it is his desire you should draw, even that what is proposed has in its tendency something which is prejudicial to one or other or all of these objects of general regard. Of the truth of the intimation thus conveyed, had it been made in the form of a direct assertion or averment, some proof might naturally have been looked for: by a direct assertion, a sort of notice is given to the hearer or reader to prepare himself for someting in the shape of proof; but when nothing is asserted, nothing is on the one hand offered, nothing on the other expected, to be proved.

1. *Order.*

Exposure. — Among the several cloudy appellatives which have been commonly employed as cloaks for misgovernment, there is none more conspicuous in this atmosphere of illusion than the word *Order*.

The word *order* is in a peculiar degree adapted to the purpose of a cloak for *tyranny* — the word *order* is more extensive than law, or even than government.

But, what is still more material, the word *order* is of the eulogistic cast; whereas the words *government* and *law*, howsoever the things signified may have been taken in the lump for subjects of praise, the complexion of the signs themselves is still tolerably neutral: just as is the case with the words *constitution* and *institutions*.

Thus, whether the measure or arrangement be a mere transitory measure or a permanent law — if it be a tyrannical one, be it ever so tyrannical, in the word *order* you have a term not only wide enough, but in every respect better adapted than any other which the language can supply, to serve as a cloak for it. Suppose any number of men, by a speedy death or a lingering one, destroyed for meeting one another for the purpose of obtaining a remedy for the abuses by which they are suffering — what nobody can deny is, that by their destruction, *order* is maintained; for the *worst* order is as truly *order* as the *best*. Accordingly, a clearance of this sort having been effected, suppose in the House of Commons a Lord Castlereagh, or in the House of Lords a Lord Sidmouth, to stand up and insist, that by a measure so undeniably prudential order was maintained, with what truth could they be contradicted? And who is there that would have the boldness to assert that order ought not to be maintained?

To the word *order*, add the word *good*, the strength of the checks, if any there were, that were thus applied to tyranny, would be but little if at all increased. By the word *good*, no other idea is brought to view than that of the sentiment of approbation, as attached by the person by whom it is employed to the object designated by the substantive to which this adjunct is applied. Order is any arrangement which exists with reference to the object in question; — good order is that order, be it what it may, which it is my wish to be thought to approve of.

Take the state of things under *Nero*, under *Caligula*: with as indisputable propriety might the word *order* be applied to it, as to the state of things at present in Great Britain or the American United States.

What in the eyes of Bonaparte was good order? That which it had been his pleasure to establish.

By the adjunct *social*, the subject *order* is perhaps rendered somewhat the less fit for the use of tyrants, but not much. Among the purposes to which the word *social* is employed, is indeed that of bringing to view a state of things favourable to the happiness of society: but a purpose to which it is also employed, is that of bringing to view a state of things no otherwise considered than as having place in society. By the war which in the Roman history bears the name of the social war, no great addition to the happiness of society was ever supposed to be made; yet it was not the less a social one.

As often as any measure is brought forward having for its object the making any the slightest defalcation from the amount of the sacrifice made of the interest of the many to the interest of the few, *social* is the adjunct by which the *order* of things to which it is pronounced hostile, is designated.

By a defalcation made from any part of the mass of factitious delay, vexation, and expense, out of which, and in proportion to which, lawyers' profit is made to flow — by any defalcation made from the mass of needless and worse than useless emolument to office, with or without service or pretence of service — by any addition endeavoured to be made to the quantity, or improvement in the quality of service rendered, or time bestowed in service rendered in return for such emolument — by every endeavour that has for its object the persuading the people to place their fate at the disposal of any other agents than those in whose hands breach of trust is certain, due fulfilment of it morally and physically impossible, — *social order* is said to be endangered, and threatened to be destroyed.

Proportioned to the degree of clearness with which the only true and justifiable end

of government is held up to view in any discourse that meets the public eye, is the danger and inconvenience to which those rulers are exposed, who, for their own particular interest, have been engaged in an habitual departure from that only legitimate and defensible course. Hence it is, that, when compared with the words *order*, *maintenance of order*, the use even of such words as *happiness*, *welfare*, *well-being*, is not altogether free from danger, wide-extending and comparatively indeterminate as the import of them is: to the single word *happiness*, substitute the phrase *greatest happiness of the greatest number*, the description of the end becomes more determinate and even instructive, the danger and inconvenience to misgovernment and its authors and its instruments still more alarming and distressing; for then, for a rule whereby to measure the goodness or badness of a government, men are referred to so simple and universally apprehensible a standard as the numeration table. By the pointing men's attentions to this end, and the clearness of the light thus cast upon it, the importance of such words as the word *order*, which by their obscurity substitute to the offensive light the useful and agreeable darkness, is more and more intimately felt.

2. *Establishment.*

In the same way, again, *Establishment* is a word in use, to protect the bad parts of establishments, by charging those who wish to remove or alter them, with the wish to subvert all establishments, or all good establishments.*

3. *Matchless Constitution.*

The constitution has some good points; it has some bad ones: it gives facility, and, until reform — radical reform — shall have been accomplished, security and continual increase to waste, depredation, oppression, and corruption in every department, and in every variety of shape.

Now, in their own name respectively, waste depredation, oppression, corruption, cannot be toasted: gentlemen would not cry, Waste for ever! Depredation for ever! Oppression for ever! Corruption for ever! But The constitution for ever! this a man may cry, and does cry, and makes a merit of it.

Of this instrument of rhetoric, the use is at least as old as Aristotle. As old as Aristotle is even the receipt for making it; for Aristotle has himself given it: and of how much longer standing the use of it may have been, may baffle the sagacity of a Mitford to determine. How sweet are gall and honey! how white are soot and snow!

Matchless Constitution! there's your sheet-anchor! there's your true standard! — rally round the constitution; — that is, rally round waste, rally round depredation, rally round oppression, rally round corruption, rally round election terrorism, rally round imposture — imposture on the hustings, imposture in Honourable House, imposture in every judicatory.

Connected with this toasting and this boasting, is a theory, such as a Westminster or Eton boy on the sixth form, aye, or his grandmother, might be ashamed of. For among those who are loudest in crying out theory (as often as any attempt is made at reasoning, any appeal made to the universally known and indisputable principles of human nature,) always may some silly sentimental theory be found.

The constitution, — why must it not be looked into? — why is it, that under pain of being *ipso facto* anarchist convict, we must never presume to look at it otherwise than with shut eyes? Because it was the work of our ancestors, — of ancestors, of legislators, few of whom could so much as read, and those few had nothing before them that was worth the reading. First theoretical supposition, *wisdom of barbarian ancestors.*

When from their ordinary occupation, their order of the day, the cutting of one another's throats, or those of Welchmen, Scotchmen, or Irishmen, they could steal now and then a holiday, how did they employ it? In cutting Frenchmen's throats in order to get their money: this was active virtue: — leaving Frenchmen's throats uncut, was indolence, slumber, inglorious ease. Second theoretical supposition, *virtue of barbarian ancestors.*

Thus fraught with habitual wisdom and habitual virtue, they sat down and devised; and setting before them the best ends, and pursuing those best ends by the best means, they framed — in outline at any rate — they planned and executed our Matchless Constitution — the constitution as it stands: and may it for ever stand!

Planned and executed? On what occasion? on none. At what place? at none. By whom? by nobody.

---

* In the church establishment, the bad parts are —

1. Quantity and distribution of payment; — its inequality creating opposite faults — excess and deficiency. The excessive part calling men off from their duty, and, as in lotteries, tempting an excessive number of adventurers: the defect deterring men from engaging in the duty, or rendering them unable to perform it as it ought to be performed.

2. Mode of payment; — tithes, a tax on food, which discourages agricultural improvements, and occasions dissension between the minister and his parishioners.

3. Forms of admission, compelling insincerity, subversive of the basis of morality. As to purely speculative points, no matter which side a man embraces, so he be *sincere*, but highly mischievous that he should maintain even the right side (where there happens to be any) when he is *not* sincere.

At no time? Oh yes, says everything-as-it-should-be Blackstone. Oh yes, says Whig after Whig, after the charming commentator; anno Domini 1660, then it is that it was in its perfection, about fourteen years before James the Second mounted the throne with a design to govern in politics as they do in Morocco, and in religion as they do at Rome; to govern without parliament, or in spite of parliament: a state of things for which, at this same era of perfection, a preparation was made by a parliament, which being brought into as proper a state of corruption as if Lord Castlereagh had had the management of it, was kept on foot for several years together, and would have been kept a-foot till the whole system of despotism had been settled, but for the sham popish plot by which the fortunate calumny and subornation of the Whigs defeated the bigotry and tyranny of the Tories.

What, then, says the only true theory — that theory which is uniformly confirmed by all experience?

On no occasion, in no place, at no time, by no person possessing any adequate power, has any such end in view as the establishing the greatest happiness of the greatest number, been hitherto entertained: on no occasion, on the part of any such person, has there been any endeavour, any wish for any happiness other than his own and that of his own connexions, or any care about the happiness or security of the subject-many, any further than his own has been regarded as involved in it.

Among men of all classes, from the beginning of those times of which we have any account in history — among all men of all classes, an universal struggle and contention on the part of each individual for his own security and the means and instruments of his own happiness—for money, for power, for reputation natural and factitious, for constant ease, and incidental vengeance. In the course of this struggle, under favourable circumstances connected with geographical situation, this and that little security has been caught at, obtained, and retained by the subject-many, against the conjoined tyranny of the monarch and his aristocracy. No plan pursued by anybody at any time — the good established, as well as the bad remaining, the result of an universal scramble, carried on in the storm of contending passions under favour of opportunity — at each period, some advantages which former periods had lost, others, which they had not gained.

But the only regular and constant means of security being the influence exercised by the will of the people on the body which in the same breath admit themselves and deny themselves to be their agents, and that influence having against it and above it the corruptive and counter-influence of the ruling few, the servants of the monarchy and the members of the aristocracy — and the quantity of the corruptive matter by which that corruptive influence operates, being every day on the increase; hence it is, that while all names remain unchanged, the whole state of things grows every day worse and worse, and so will continue to do, till even the forms of parliament are regarded as a useless incumbrance, and pure despotism, unless arrested by radical reform, takes up the sceptre without disguise.

While the matter of waste and corruption is continually accumulating — while the *avalanche* composed of it is continually rolling on — that things should continue long in their present state seems absolutely impossible. Three states of things contend for the ultimate result:—despotic monarchy undisguised by form; representative democracy under the form of monarchy; representative democracy under its own form.

In this, as in every country, the government has been as favourable to the interests of the ruling few, and thence as unfavourable to the general interests of the subject-many,—or, in one word, as *bad*—as the subject-many have endured to see it,—have persuaded themselves to suffer it to be. No abuse has, except under a sense of necessity, been parted with—no remedy, except under the like pressure, applied. But under the influence of circumstances in a great degree peculiar to this country, at one time or another the ruling few have found themselves under the necessity of sacrificing this or that abuse — of instituting, or suffering to grow up, this or that remedy.

It is thus, that under favour of the contest between Whigs and Tories, the liberty of the press, the foundation of all other liberties, has been suffered to grow up and continue. But this liberty of the press is not the work of institution, it is not the work of law: what there is of it that exists, exists not by means, but in spite, of law. It is all of it contrary to law: by law there is no more liberty of the press in England, than in Spain or Morocco. It is not the constitution of the government, it is not the force of the law; it is the weakness of the law we have to thank for it. It is not the Whigs that we have to thank for it, any more than the Tories. The Tories — that is, the supporters of monarchy — would destroy it, simply assured of their never being in a condition to have need of it: the Whigs would with equal readiness destroy it, or concur in destroying it, could they possess that same comfortable assurance. But it has never been in their power; and to that impotence is it that we are indebted for their zeal for the liberty of the press and the support they have given to the people in the exercise of

it. Without this arm they could not fight their battles; without this for a trumpet, they could not call the people to their aid.

Such corruption was not, in the head of any original framer of the constitution, the work of design: but were this said without explanation, an opinion that would naturally be supposed to be implied in it, is, that the constitution was originally in some one head, the whole, or the chief part of it, the work of design. The evil consequence of a notion pronouncing it the work of design would be, that, such a design being infinitely beyond the wisdom and virtue of any man in the present times, a planner would be looked out for in the most distant age that could be found; — thus the ancestor-wisdom fallacy would be the ruling principle, and the search would be fruitless and endless. But the non-existence of any determinate design in the formation of the constitution may be proved from *history*. The House of Commons is the characteristic and vital principle. Anno 1265, the man by whom the first *germ* was planted was Simon de Montfort, Earl of Leicester, a foreigner and a rebel. In this first call to the people, there was no better nor steadier design than that of obtaining momentary support for rebellion. The practice of seeing and hearing deputies from the lower orders before money was attempted to be taken out of their pockets, having thus sprung up, in the next reign Edward the First saw his convenience in conforming to it. From this time till Henry the Sixth's, instances in which laws were enacted by kings, sometimes without consulting Commons — sometimes without consulting them or Lords, are not worth looking out. Henry the Sixth's was the first reign in which the House of Commons had really a part in legislation: till then, they had no part in the penning of any laws; no law was penned till after they were dissolved. Here, then, so late as about 1450 (between 1422 and 1461,) the House of Commons, as a branch of the legislature, was an innovation: till then (anno 1450,) *constitution* (if the House of Commons be a part of it,) there was none. Parliament? Yes: consisting of king and lords, *legislators;* deputies of commons, *petitioners*. Even of this aristocratical parliament, the existence was precarious: indigence or weakness produced its occasional reproduction; more prudence and good fortune would have sufficed for throwing it into disuse and oblivion: like the obsolete legislative bodies of France and Spain, it would have been reduced to a possibility. All this while, and down to the time when the reassembling of parliaments was imperfectly secured by indeterminate laws, occasioned by the temporary nature of pecuniary supplies, and the constant cravings of royal paupers, had the constitution been a tree, and both Houses branches, either or both might have been lopped off, and the tree remain a tree still.*

After the bloody reigns of Henry the Eighth and Mary, and the too short reign of Edward the Sixth, comes that of Elizabeth, who openly made a merit of her wish to govern without parliament: members presuming to think for themselves, and to speak as they thought, were sent to prison for repentance. After the short parliaments produced in the times of James the First and Charles the First by profusion and distress, came the first long parliament. Where is now the constitution? Where the design? — the wisdom? The king having tried to govern without lords or commons, failed: the commons having extorted from the king's momentary despair, the act which converted them into a perpetual aristocracy, tried to govern without king or lords, and succeeded. In the time of Charles the Second, no design but the king's design of arbitrary government executed by the instrumentality of seventeen years long parliament. As yet, for the benefit of the people, no feasible design but in the seat of supreme power; and *there*, conception of any such design scarce in human nature.

The circumstance to which the cry of Matchless Constitution is in a great degree indebted for its pernicious efficiency, is — that there was a time in which the assertion contained in it was incontrovertibly true: till the American colonies threw off the yoke, and became independent states; no political state possessed of a constitution equalling it or approaching it in goodness, was anywhere to be found.

But from this its goodness in a comparative state, no well-grounded argument could at any time be afforded against any addition that could at any time be made to its intrinsic goodness. Persons happier than myself are not to be found anywhere: in this observation, supposing it true, what reason is there for my forbearing to make myself as much happier than I am at present, as I can make myself?

This pre-eminence is therefore nothing to the purpose; for of the pains taken in this way to hold it up to view, the design can be no other than to prevent it from being ever greater than it is.

But another misfortune is, that it is every day growing less and less: so that while men

* Between Henry the Third, and Henry the Sixth (anno 1265 to 1422) it is true there were frequent acts ordaining annual, and even oftener than annual parliaments.[a] Still these were but vague promises, made only by the king, with two or three petty princes: the Commons were not legislators, but petitioners: never seeing, till after enactment the acts to which their assent was recorded.

[a] See Christian on Blackstone.

keep on vaunting this spurious substitute to positive goodness, sooner or later it will vanish altogether.

The supposition always is, that it is the same one day as another. But never for two days together has this been true. Since the Revolution took place, never, for two days together, has it been the same: every day it has been worse than the preceding; for by every day, in some way or other, addition has been made to the quantity of the matter of corruption — to that matter by which the effect of the only efficient cause of good government, the influence of the people, has been lessened.

A pure despotism may continue in the same state from the beginning to the end of time: by the same names, the same things may be always signified. But a mixed monarchy, such as the English, never can continue the same: the names may continue in use for any length of time; but by the same names, the same state of things is never for two days together signified. The quantity of the matter of corruption in the hands of the monarch being every day greater and greater, the practice in the application of it to its purpose, and thence the skill with which application is made of it on the one hand, and the patience and indifference with which the application of it is witnessed, being every day greater and greater, the comparative quantity of the influence of the people, and of the security it affords, is every day growing less and less.

While the same names continue, no difference in the things signified is ever perceived, but by the very few, who having no interest in being themselves deceived, nor in deceiving others, turn their attention to the means of political improvement. Hence it was, that with a stupid indifference or acquiescence the Roman people sat still, while their constitution, a bad and confused mixture of aristocracy and democracy, was converted into a pure despotism.

With the title of representatives of the people, the people behold a set of men meeting in the House of Commons, originating the laws by which they are taxed, and concurring in all the other laws by which they are oppressed. Only in proportion as these their nominal representatives are chosen by the free suffrages of the people, and, in case of their betraying the people, are removable by them, can such representatives be of any use. But except in a small number of instances — too small to be on any one occasion soever capable of producing any visible effect — neither are these pretended representatives ever removable by them, nor have they ever been chosen by them. If, instead of a House of Commons and a House of Lords, there were two Houses of Lords and no House of Commons, the ultimate effect would be just the same. If it depended on the vote of a reflecting man, whether, instead of the present House of Commons, there should be another House of Lords, his vote would be for the affirmative: the existing delusion would be completely dissipated, and the real state of the nation be visible to all eyes; and a deal of time and trouble which is now expended in those debates, which, for the purpose of keeping on foot the delusion, are still suffered, would be saved.

As to representation, no man can even now be found so insensible to shame, as to affirm that any real representation has place: but though there is no real representation, there is, it is said, a *virtual* one; and with this, those who think it worth their while to keep up the delusion, and those who are, or act and speak as if they were deluded, are satisfied. If those who are so well satisfied with a virtual representation, which is not real, would be satisfied with a like virtual receipt of taxes on the one part, and a virtual payment of taxes on the other, all would be well. But this unfortunately is not the case: the payment is but too real, while the falsity of the only ground on which the exaction of it is so much as pretended to be justified, is matter of such incontestable verity, and such universal notoriety, that the assertion of its existence is a cruel mockery.

4. *Balance of Power.*

In general, those by whom this phrase has been used, have not known what they means by it: it has had no determinate meaning in their minds. Should any man ever find for it any determinate meaning, it will be this — that of the three branches between which, in this constitution, the aggregate powers of government are divided, it depends upon the will of each to prevent the two others from doing anything — from giving effect to any proposed measure. How, by such arrangement, evil should be produced, is easy enough to say; for of this state of things one sure effect is — that whatsoever is in the judgment of any one of them contrary to its own sinister interest, will not be done; on the other hand, notwithstanding the supposed security, whatsoever measure is by them all seen or supposed to be conducive to the aggregate interest of them all, will be carried into effect, how plainly soever it may be contrary to the universal interest of the people. No abuse, in the preservation of which they have each an interest, will ever, so long as they can help it, be removed — no improvement, in the prevention of which any one of them has an interest, will ever be made.

The fact is, that wherever on this occasion the word *balance* is employed, the sentence is mere nonsense. By the word *balance* in its original import, is meant a pair of scales. In

an arithmetical account, by an ellipsis to which, harsh as it is, custom has given its sanction, it is employed to signify that sum by which the aggregate of the sums that stand on one side of an account, exceeds the aggregate of the sums that stand on the other side of that same account. To the idea which, on the sort of occasion in question, the word *balance* is employed to bring to view, this word corresponds not in any degree in either of these senses. To accord with the sort of conception which, if any, it seems designed to convey, the word should be, not balance, but equipoise. When two bodies are so connected, that whenever the one is in motion, the other is in motion likewise, and *that* in such sort, that in proportion as one rises the other falls, and yet at the moment in question no such motion has place, the two bodies may be said to be in *equipoise;* one weighs exactly as much as the other. But of the figure of speech here in question, the object is not to present a clear view of the matter, but to prevent any such view of it from being taken: to this purpose, therefore the nonsensical expression serves better than any significant one. The ideas belonging to the subject are thrown into confusion — the mind's eye, in its endeavours to see into it is bewildered; and this is what is wanted.

It is by a series of simultaneous operations that the business of government is carried on — by a series of actions: action ceasing, the body-politic, like the body-natural, is at an end. By a balance, if anything, is meant a pair of scales with a weight in each: the scales being even, if the weights are uneven, that in which is the heaviest weight begins to move; it moves downward, and at the same time the other scale with the weight in it moves upwards. All the while this motion is going on, no equipoise has place — the two forces do not balance each other: if the wish is that they should balance each other, then into the scale which has in it the lighter weight, must be put such other weight as shall make it exactly equal to the heavier weight; or, what comes to the same thing, a correspondent weight taken from that scale which has in it the heavier weight.

The balance is now restored. The two scales hang even: neither of the two forces preponderates over the other. But with reference to the end in view, or which ought to be in view — the use to be derived from the machine — what is the consequence? — All motion is at an end.

In the case in question, instead of two, as in a common pair of scales, there are three forces, which are supposed, or said to be, antagonizing with one another. But were this all the difference, no conclusive objection to the metaphor could be derived from it; for, from one, and the same fulcrum or fixed point you might have three scales hanging with weights in them, if there were any use in it. In the expression, the image would be more complicated, but in substance it would be still the same.

Pre-eminently indeterminate, indistinct, and confused on every occasion, is the language in which, to the purpose in question, application is made to this image of a balance; and on every occasion, when thus steadily looked into, it will be found to be neither better nor worse than so much nonsense: nothing can it serve for the justification of — nothing can it serve for the explanation of.

The fallacy often assumes a more elaborate shape: — "The constitution is composed of three forces, which, antagonizing with each other, cause the business of government to be carried on in a course which is different from the course in which it would be carried on if directed solely by any one, and is that which results from the joint influence of them all, each one of them contributing in the same proportion to the production of it."

Composition and resolution of forces: this image, though not so familiar as the other, is free from the particular absurdity which attaches upon the other: but upon the whole, the matter will not be found much mended by it. In proportion as it is well conducted, the business of government is uniformly carried on in a direction tending to a certain end — the greatest happiness of the greatest number: — in proportion as they are well conducted, the operations of all the agents concerned, tend to that same end. In the case in question, here are three forces, each tending to a certain end: take any one of these forces; take the direction in which it acts; suppose that direction tending to the same exclusively legitimate end, and suppose it acting alone, undisturbed, and unopposed, the end will be obtained by it: add now another of these forces; suppose it acting exactly in the same direction, the same end will be attained with the same exactness, and attained so much the sooner: and so again, if you add the third. But that second force — if the direction in which it acts be supposed to be ever so little different from that exclusively legitimate direction in which the first force acts, the greater the difference, the further will the aggregate or compound force be from attaining the exact position of that legitimate end.

But in the case in question, how is it with the three forces? So far from their all tending to that end, the end they tend to is in each instance as opposite to that end as possible. True it is, that amongst these three several forces, that sort of relation really has place by which the sort of compromise in question is produced: a sort of direction which is not exactly the same as that which would be

taken on the supposition that any one of the three acted alone, clear of the influence of both the others. But with all this complication, what is the direction taken by the machine? Not that which carries it to the only legitimate end, but that which carries it to an end not very widely distant from the exact opposite one.

In plain language, here are two bodies of men, and one individual more powerful than the two bodies put together — say three powers—each pursuing its own interest, each interest a little different from each of the two others, and not only different from, but opposite to, that of the greatest number of the people. Of the substance of the people, each gets to itself and devours as much as it can: each of them, were it alone, would be able to get more of that substance, and accordingly would get more of that substance, than it does at present; but in its endeavours to get that more, it would find itself counteracted by the two others; each, therefore, permits the two others to get their respective shares, and thus it is that harmony is preserved.

Balance of forces. — A case there is, in which this metaphor, this image, may be employed with propriety: this is the case of international law and international relations. Supposing it attainable, what is meant by a balance of forces, or a balance of power, is a legitimate object — an object, the effectuation of which is beneficial to all the parties interested. What is that object? It is, in one word, *rest* — rest, the absence of all hostile motion, together with the absence of all coercion exercised by one of the parties over another — that rest, which is the fruit of mutual and universal independence. Here then, as between nation and nation, that rest which is the result of well-balanced forces is peace and prosperity. But on the part of the several official authorities and persons by whose operations the business of government in its several departments is carried on, is it prosperity that rest has for its consequence? No: on the contrary, of universal rest, in the forces of the body-politic as in those of the body-natural, the consequence is death. No action on the part of the officers of government, no money collected in their hands — no money, no subsistence; no subsistence, no service; — no service, everything falls to pieces, anarchy takes the place of government, government gives place to anarchy.

The metaphor of the balance, though so far from being applicable to the purpose in question, is in itself plain enough: it presents an image. The metaphor of the composition of forces is far from being so: it presents not any image. To all but the comparatively few, to whom the principles of mechanics, together with those principles of geometry that are associated with them, are thus far familiar, they present no conception at all: the conversion of the two tracts described by two bodies meeting with one another at an angle formed by the two sides of a parallelogram, into the tract described by the diagonal of the parallelogram, is an operation never performed for any purpose of ordinary life, and incapable of being performed otherwise than by some elaborate mechanism constructed for this and no other purpose.

When the metaphor here in question is employed, the three forces in question — the three powers in question, are, according to the description given of them, the power of the Monarch, the power of the House of Lords, and the power of the People. Even according to this statement, no more than as to a third part of it would the interest of the people be promoted: as to two thirds, it would be sacrificed. For example: out of every £300 raised upon the whole people, one hundred would be raised for the sake, and applied to the use of the whole people; the two other thirds, for the sake and to the use of the two confederative powers — to wit, the monarch and the House of Lords.

Not very advantageous to the majority of the people, not very eminently conducive to good government, would be this state of things; in a prodigious degree, however, more conducive would it be, than is the real state of things. For, in the respect in question, what is this real state of things? The power described as above by the name of the power of the people, is, instead of being the power of the people, the power of the monarch, and the power of the House of Lords, together with that of the rest of the aristocracy under that other name.

5. *Glorious Revolution.*

This is a Whig's cry, as often as it is a time to look bold, and make the people believe that he had rather be hanged than not stand by them. What? a revolution for the people? No: but, what is so much better, a revolution for the Whigs — a revolution of 1688. There is your revolution — the only one that should ever be thought of without horror. A revolution for discarding kings? No: only a revolution for changing them. There would be some use in changing them — there would be something to be got by it. When their forefathers of 1688 changed James for William and Mary, William got a good slice of the cake, and they got the rest among them. If, instead of being changed, kings were discarded, what would the Whigs get by it? They would get nothing; — they would lose not a little: they would lose their seats, unless they really sat and did the business they were sent to do, and then they would lose their ease.

The real uses of this revolution were the putting an end to the tyranny, political and religious, of the Stuarts: — the political, governing without parliament, and forcing the people to pay taxes without even so much as the show of consenting to them by deputies chosen by themselves: — the religious, forcing men to join in a system of religion which they believed not to be true.

But the deficiencies of the revolution were, leaving the power of governing, and in particular that of taxing, in the hands of men whose interest it was to make the amount of the taxes excessive, and to exercise misrule to a great extent in a great variety of other ways.

So far as by security given to all, and thence, by check put to the power of the crown, the particular interest of the aristocratical leaders in the revolution promised to be served, such security was established, such check was applied. But where security could not be afforded to the whole community without trenching on the power of the ruling few, there it was denied. Freedom of election, as against the despotic power of the monarch, was established; — freedom of election, as against the disguised despotism of the aristocracy, Tories and Whigs together, remained excluded.

CHAPTER IV.

ALLEGORICAL IDOLS — (*ad imaginationem.*)

Exposition.—The use of this fallacy is the securing to persons in office, respect independent of good behaviour. This is in truth only a modification of the fallacy of vague generalities, exposed in the preceding chapter. It consists in substituting for men's proper official denomination, the name of some fictitious entity, to whom, by customary language, and thence opinion, the attribute of excellence has been attached.

Examples: — 1. *Government;* for members of the governing body. 2. *The law;* for lawyers. 3 *The church;* for churchmen. The advantage is, the obtaining for them more respect than might be bestowed on the class under its proper name.

Exposure. — I. *Government.* In its proper sense, in which it designates the set of operations, it is true, and universally acknowledged, that everything valuable to man depends upon it: security against evil in all shapes, from external adversaries as well as domestic.

II. *Law:* execution of the *law.* — By this it is that men receive whatsoever protection they receive against domestic adversaries and disturbers of their peace. By *government* — *law* — *the law* — are therefore brought to view the naturalest and worthiest objects of respect and attachment within the sphere of a man's observance: and for conciseness and ornament (not to speak of deception) the corresponding fictitious entities are feigned, and represented as constantly occupied in the performance of the abovementioned all-preserving operations. As to the real persons so occupied, if they were presented in their proper character, whether collectively or individually, they would appear clothed in their real qualities, good and bad together. But, as presented by means of this contrivance, they are decked out in all their good and acceptable qualities, divested of all their bad and unacceptable ones. Under the name of the god Æsculapius, Alexander the impostor, his self-constituted high priest, received to his own use the homage and offerings addressed to his god. Acquired, as it is believed, comparatively within late years, this word *government* has obtained a latitude of import in a peculiar degree adapted to the sinister purpose here in question. From *abstract*, the signification has become, as the phrase is, *concrete.* From the system, in all its parts taken together, it has been employed to denote the whole assemblage of the individuals employed in the carrying on of the system — of the individuals who, for the time being, happen to be members of the official establishment, and of these more particularly, and even exclusively, such of them as are members of the administrative branch of that establishment. For the designation either of the branch of the system, or of the members that belong to it, the language had already furnished the word *administration.* But the word administration would not have suited the purpose of this fallacy: accordingly, by those who feel themselves to have an interest in the turning it to account, to the proper word administration, the too ample, and thence improper word *government*, has been, probably by a mixture of design and accident, commonly substituted.

This impropriety of speech being thus happily and successfully established, the fruits of it are gathered in every day. Point out an abuse — point to this or that individual deriving a profit from the abuse: up comes the cry, "You are an enemy to government!" then, with a little news in advance, "Your endeavour is to destroy government!" Thus you are a Jacobin, an anarchist, and so forth: and the greater the pains you take for causing government to fulfil, to the greatest perfection, the professed ends of its institution, the greater the pains taken to persuade those who wish, or are content to be deceived, that you wish and endeavour to destroy it.

III. *Church.*—This is a word particularly well adapted to the purpose of this fallacy. To the elements of confusion shared by it with *government* and *law*, it adds divers pro-

per to itself. The significations indifferently attachable to the word *Church* are — 1. Place of worship; 2. Inferior officers engaged by government to take a leading part in the ceremonies of worship;* 3. All the people considered as worshippers; 4. The superior officers of government by whom the inferior, as above, are engaged and managed; 5. The rules and customs respecting those ceremonies.

The use of this fallacy to churchmen, is the giving and securing to them a share of coercive power; their sole public use, and even original destination, being the serving the people in the capacity of instructors — instructing them in a branch of learning, now more thoroughly learnt without than from them.† In the phrase "*church* and *state*," *churchmen* are represented as superior to all *non-churchmen*. By "*church* and *king*," churchmen are represented as superior to the king. Fox and Norfolk were struck off the the list of privy councillors for drinking "The sovereignty of the people:" the reduction would be greater, were all struck off who have ever drank "Church and king." According to Bishop Warburton's Alliance, the people in the character of the church, meeting with all themselves in the character of the state, agreed to invest the expounders of the sacred volume with a large share of the sovereignty. Against this system, the lawyers, their only rivals, were estopped from pleading its seditiousness in bar. In Catholic countries, the churchmen who compose Holy Mother Church possess one beautiful female, by whom the people are governed in the field of spiritual law, within which has been inclosed as much as possible of profane law. By Protestants, on Holy Mother Church the title of Whore of Babylon has been conferred: they recognise no Holy Mother Church. But in England, churchmen, a large portion of them, compose two *Almæ Matres Academiæ* — kind Mother Academies or Universities. By ingenuity such as this, out of "lubberly postmasters' boys" in any number, one "sweet Mrs. Anne Page" is composed, fit to be decked out in elements of amiability to any extent. The object and fruit of this ingenuity is the affording protection to all abuses and imperfections attached to this part of the official establishment. Church being so excellent a being, none but a monster can be an *enemy*, a *foe* to her. *Monster*, *i. e.* anarchist, Jacobin, leveller, &c. To every question having reform or improvement in view as to this part of the official establishment, the answer is one and the same: "You are an enemy to the church." For instance, among others, to such questions as follow: — 1. What does this part of the official establishment do, but read or give further explanation to one book, of which more explanation has been given already than the longest life would suffice to hear? 2. Does not this suppose a people incapable of being taught to read? 3. Would it not be more read if each of them, being able to read, had it constantly by him to read all through, than by their being at liberty some of them to go miles to hear small parts of it? Suppose it admitted, that by the addition of other services conducive to good morals and good government, business for offices not much inferior to the existing ecclesiastical offices might be found, then go on and ask — 1. As to the connexion between reward and service, do not the same rules apply to these as to profane offices? 2. Pay unconditioned-for service, — is it more effectual in producing service here than there? 3. *Here* more than *there*, — can a man serve in a place without being there? 4. Here, as there, is not a man's relish for the business proved the greater, the smaller the factitious reward he is content to receive for doing it? 5. The stronger such his relish, is not his service likely to be the better? 6. Over and above what, if anything, is necessary to engage him to render the service, does not every penny contribute to turn him aside to other and expensive occupations, by furnishing him with the means? 7. In Scotland, where there is less pay, is not *residence* more general, and clerical *service* more abundant and efficient?

Answer: Enemy! — and, if English-bred, Apostate!

1. In Scotland, does any evil arise from the non-existence of bishops? 2. In the House of Lords, any good? 3. Is not non-attendance there more general than even non-residence elsewhere? 4. *In judiciali*, does any bishop ever attend, who is not laid hold of after reading prayers? 5. *In legislatura*, ever, except where personal interest wears the mask of gratitude? 6. Such non-attendance, is it not felt rather as a relief than as a grievance?

Answer: "Enemy to the church!"

1. In Ireland, what is the use of Protestant priests to Catholics, who will neither hear nor see them? to whom they are known but as plunderers? 2. By such exemption from service, is not *value* of preferment increased? 3. By patrons, as by incumbents, are not bishopricks thus estimated? 4. Is it not there a maxim, that service and pay should be kept in separate hands? 5. In eyes not less religious than gracious, is not the value of religion inversely as the labour, as well as directly as the profit? 6. Is not this estimate the root of those scruples, by which oaths imposed to protect Protestantism from being oppressed, are employed in securing to it the pleasure of oppressing?

Answer: "Enemy to the church!"

* Articles 19, 20.

† *Ex. gr.* from unordained Methodists, &c. and Quakers.

CHAPTER V.

SWEEPING CLASSIFICATIONS --(*ad judicium.*)

Exposition. — The device of those who employ in the way of fallacy, sweeping classifications, is that of ascribing to an individual object (person or thing) any properties of another, only because the object in question is ranked in the class with that other, by being designated by the same name.

In its nature, this fallacy is equally applicable to undeserved eulogy as to undeserved censure; but it is more frequently applied to the purpose of censure, its efficiency being greater in that direction.

Exposure. — Example 1: *Kings — Crimes of Kings.* — In the heat of the French revolution, when the lot of Louis XVI. was standing between life and death, among the means employed for bringing about the catastrophe that ensued, was the publication of a multitude of inflammatory pamphlets, one of which had for its title "The Crimes of Kings."

Kings being men, and all men standing exposed to those temptations by which some of them are led into crimes, matter could not be wanting for a book so entitled: and if there are some crimes to the temptation of which men thus elevated stand less exposed than the inferior orders, there are other crimes, to which, perhaps, that elevation renders them but the more prone.

But of the man by whom on that occasion a book with such a title was published, the object, it is but too probable, was to compose out of it this argument: Criminals ought to be punished — kings are criminals — and Louis is a king: therefore Louis ought to be punished.

Example 2: *Catholics — Cruelties of Catholics.* — Not long ago, in the course, and for the purpose of the controversy on the question, whether that part of the community which is composed of persons of the Catholic persuasion, ought or ought not to be kept any longer in a state of degradation under the predominant sect, a book made its appearance, under the title of "Cruelties of the Catholics."

Of any such complete success, as the consigning in a body to the fate in which that Catholic king was, with so many of his nearest connexions, involved, all such British subjects as participate with him in that odious name, there could not be much hope: but whatsoever could, by the species of fallacy here in question, be done towards the promoting of it, was done by that publication. The object of it was to keep them still debarred from whatsoever relief remains yet to be administered to the oppressions under which they labour: either it had this object, or it had none.

To the complexion of this argument, and of the mind that could bring it forward, justice will not be done, unless an adequate conception be formed of the practical consequences to which, if to anything, it leads.

Of the Catholics of the present and of all future time, whatsoever be the character, the cruelties, and other enormities committed by persons who in former times were called by the same indefinitely comprehensive name, will still remain what they were. Whatsoever harsh treatment, therefore, this argument warrants the bestowing on these their namesakes at the present time, the same harsh treatment will, from the same argument, continue to receive the same justification, so long as there remains one individual who, consistently with truth, is capable of being characterized by the same name.

Be they what they may, the barbarities of the Catholics of those times had their limits: but of this abhorrer of Catholic barbarities, the barbarity has, in respect of the number of intended victims, no limits other than those of time.

Of the man who, to put an end to the cruelties of kings, did what depended upon him towards extirpating the class of kings, the barbarity, so far as regarded this object, was, comparatively speaking, confined within a very narrow range. All Europe would not have sufficed to supply his scaffold with a dozen victims. But after crushing as many millions of the vermin, whom his piety and his charity marked out for sacrifice, the zeal of the abhorrer of Catholic cruelties would have been in the condition of the tiger whom, in the plains of Southern Africa, a traveller depicted to us as lying breathless with fatigue amidst a flock of antelopes.

In the same injurious device the painter of the crimes of kings might, by a no less conclusive argument, have proved the necessity of crushing the English form of the Protestant religion, and consigning to the fate of Louis XVI. the present head of it.

By order of King James I. two men, whose misfortune it was not to be able to form, in relation to some inexplicable points of technical theology, the same conception that was entertained, or professed to be entertained, by the royal ruler and instructor of his people, were burnt alive.* George IV. not only bears in common with James I. the two different denominations—viz. Protestant of the Church of England, and King of Great Britain — but, as far as marriage can be depended on for proof of filiation, is actually of the same blood and lineage with that royal and triumphant champion of local orthodoxy.

If, indeed, in the authentic and generally received doctrines of the religion in question, there were anything that compelled its pro-

* Consult Hume, Tindal, Harris, Henry.

fessors to burn or otherwise to destroy or ill-treat all or any of those that differed from them, and if by any recent overt-act an adherence to those dissocial doctrines had appeared in practice, in such case the adherence to such dissocial doctrines would afford a just ground for whatsoever measures of security were deemed necessary to guard other men from the effect of such doctrines and such practice.

But by no doctrines of their religion are Catholics compelled to burn or otherwise ill-treat those who differ from them, any more than by the doctrines of the Church of England James I. was compelled to burn those poor Anabaptists.

If from analogy any sincere and instructive use had on this occasion been intended to be derived from different countries professing the same persuasion, — in these our times a much more instructive lesson would be afforded than any that could be derived from even the same country at such different times.

If in Ireland, where three-fourths or more of the population is composed of Catholics, no ill-treatment has, within the memory of man, been bestowed by Catholics, as such, upon Protestants, as such; while in the same country so much ill-treatment has on other accounts been bestowed by each of these persuasions upon the other; it is, it may be said, because the power of doing so with impunity is not in their hands.

But in countries where the Catholic religion is the predominant religion, and in which at the same time, as in our islands, barbarity on the score of heresy was by Catholics exercised according to law, and in the countries in which the exercise of those barbarities was at those times most conspicuous,—of no such barbarities has any instance occurred for a long course of years.*

CHAPTER VI.

SHAM DISTINCTIONS — (*ad judicium.*)

Exposition.— Of the device here in view, the nature may be explained by the following direction for the use of it: —

When any existing state of things has too much evil in it to be defensible *in toto*, or proposals for amendment are too plainly necessary to be rejectible *in toto*, the evil and the good being nominally distinguished from each other by two corresponding and opposite terms, eulogistic and dyslogistic, but in such sort that, to the nominal line of distinction thus drawn, there corresponds not any determinate real difference, — declare your approbation of the good by its eulogistic name, and thus reserve to yourself the advantage of opposing it without reproach by its dyslogistic name, and so *vice versa* declare your disapprobation of the evil, &c.

Exposure.—Example 1: *Liberty and Licentiousness of the Press.* — Take for example the case of the Press.

The press (including under this denomination every instrument employed or employable for the purpose of giving diffusion to the matter of human discourse by visible signs) — the press has two distinguishable uses, — viz. moral and political: moral, consisting in whatsoever check it may be capable of opposing to misconduct in private life — political, in whatsoever check it may be capable of opposing to misconduct in public life, that is, on the part of public men — men actually employed, or aspiring to be employed, in any situation in the public service: opposing, viz. by pointing on the persons to whom such misconduct is respectively imputable, a portion more or less considerable of disapprobation and consequent ill-will on the part of the public at large — a portion more or less considerable according to the nature of the case.

If to such misconduct there be no such check at all opposed, as that which it is the nature of the press to apply, the consequence is, that of such misconduct, whatsoever is not included in the prohibitions and eventual punishment provided by law, will range uncontrouled: in which case, so far as concerns the political effect of such exemption from controul, the result is power uncontroulable, arbitrary despotism, in the hands whatsoever they are, in which the powers and functions of government happen to be reposed: and, moreover, in the instance of such misconduct as is included in that system of prohibition and eventual punishment, the controul will be without effect, in so far as by delay, vexation, and expense, natural or factitious, the individual who would be led to call for the application, is prevented from making such demand.

At the same time, on the other hand, the use of the press cannot be altogether free, but that on pretence of giving indication of misconduct that has actually taken place, supposed misconduct that never did actually take place, will to this or that individual be imputed.

* Even in Spain, I have been assured, if I may depend upon an assurance given me by persons fully informed, and of the most respectable character, no instance of a capital execution for any offence against religion has occurred within these twenty-two or twenty-three years.

In the capital of Mexico, if I may believe a gentleman of distinction in our own country, by whom the capital of that kingdom was lately visited, he was by the Grand Inquisitor himself conducted into every apartment of the prison of the Inquisition, for the purpose of his being assured by ocular demonstration, of the non-existence of any person in the state of a prisoner within the walls.

In so far as the imputation thus conveyed happens to be false, the effects of the liberty in question will, so far as concerns any individual person thus unjustly accused, be of the *evil* cast, and by whomsoever they are understood so to be, the dyslogistic appellation *licentiousness* will naturally be applied.

Here then comes the dilemma — the two evils between which a choice must absolutely be made. Leave to the press its perfect liberty; along with the just imputations, which alone are the useful ones, will come, and in an unlimited proportion, unjust imputations, from which, in so far as they are unjust, evil is *liable* to arise.

But to him whose wish it really is that good morals and good government should prevail, the choice need not be so difficult as at first sight it may seem to be.

Let all just imputations be buried in utter silence,—what you are sure of is, that misconduct in every part of the field of action, moral and political, private and public, will range without controul — free from all that sort of controul which can be applied by the press, and not by anything else.

On the other hand, let all unjust imputations find, through this channel, an unobstructed course,— still, of the evil — the personal suffering threatened by such infliction — there is neither certainty, nor in general any near approach to it. Open to accusation, that same channel is not less open to defence.* He, therefore, who has truth on his side, will have on his side all that advantage which it is in the nature of truth to give.

That advantage, — is it an inconsiderable one? On the contrary supposition is founded, whatsoever is done in the reception and collection of judicial evidence — whatsoever is intended by the exercise of judicial authority, by the administration of whatsoever goes by the name of justice.

Meantime, if any arrangements there be, by which the door may be shut against unjust imputations, without incurring to an equal amount that sort of evil which is liable to result from the exclusion of just ones, so much the better.

But unless and until such arrangements shall have been devised and carried into effect, the tendency and effect of all restrictions having for their object the abridging of the liberty of the press, cannot but be evil on the whole.

To shut the door against such imputations as are either unjust or useless, leaving it at the same time open to such as are at the same time just and useful, would require a precise, a determinate, a correct and complete definition of the appellative, whatsoever it be, by which the abuse — the improper use — the supposed preponderantly pernicious use — of the press, is endeavoured to be brought to view.

To establish this definition, belongs to those, and to those alone, in whose hands the supreme power of the state is vested.

Of this appellative, no such definition has ever yet been given — of this appellative no such definition can reasonably be expected at the hands of any person so situated, since, by the establishing of such definition, their power would be curtailed, their interest prejudiced.

While this necessary definition remains unestablished, there remains with them the faculty of giving continuance and increase to the several points of abuse and misgovernment by which their interest in its several shapes is advanced.

Till that definition is given, the *licentiousness* of the press is every disclosure by which any abuse, from the practice of which they draw any advantage, is brought to light, and exposed to shame: —whatsoever disclosure it is, or is supposed to be, their interest to prevent.

The *liberty* of the press is such disclosure, and such only, from which no such inconvenience is apprehended.

No such definition can be given but at their expense: — at the expense of their arbitrary power— of their power of misconduct in the exercise of the functions of government, — at the expense of their power of misgovernment — of their power of sacrificing the public interest to their own private interest.

Should that line have ever been drawn, then it is that licentiousness may be opposed without opposing liberty: while that line remains undrawn, opposing licentiousness is opposing liberty.

Thus much being understood, in what consists the device here in question? It consists in employing the sham approbation given to the species of liberty here in question under the name of *liberty*, as a mask or cloak to the real opposition given to it under the name of *licentiousness*.

It is in the licentiousness of the press that the judge pretends to see the downfall of that government, the corruption of which he is upholding by inflicting on all within his reach those punishments which by his predecessors have been provided for the suppression of all disclosures by means of which the abuses which he profits by might be checked.

Example 2: — *Reform, temperate and intemperate.*— For the designation of the species or degree of political reform, which, by him who speaks of it, is meant to be represented as excessive or pernicious, the language affords no such single-worded appellative as

* If it by accident be not so, this constitutes a different and distinct evil, for which is required a different and distinct remedy.

in the case of *liberty*:— the liberty of the press. For making the nominal and pretended real distinction, and marking out on the object of avowed reprobation the pernicious or excessive species or degree, recourse must therefore be had to epithets or adjuncts: such, for instance, as violent, intemperate, outrageous, theoretical, speculative, and so forth.

If, with the benefit of the subterfuge afforded by any of these dyslogistic epithets, a man indulges himself in the practice of reprobating reform in terms thus vague and comprehensive, and without designating by any more particular and determinate word, the species or degree of reform to which he means to confine his reprobation, or the specific objections he may have to urge, you may in general venture to conclude it is not to any determinate species or degree that his real disapprobation and intended opposition confines itself, but that it extends itself to every species or degree of reform which, according to his expectation, would be efficient; that is, by which any of the existing abuses would find a corrective.

For, between all abuses whatsoever, there exists that connexion — between all persons who see each of them any one abuse in which an advantage results to himself, there exists in point of interest that close and sufficiently understood connexion, of which intimation has been given already. To no one abuse can correction be administered, without endangering the existence of every other.

If, then, with this inward determination not to suffer, so far as depends upon himself, the adoption of any reform which he is able to prevent, it should seem to him necessary or advisable to put on for a cover, the profession or appearance of a desire to contribute to such reform, — in pursuance of the device or fallacy here in question, he will represent that which goes by the name of reform as distinguishable into two species; one of them a fit subject for approbation, the other for disapprobation. That which he thus professes to have marked for approbation, he will accordingly, for the expression of such approbation, characterize by some adjunct of the *eulogistic* cast — such as moderate, for example, or temperate, or practical, or practicable.

To the other of these nominally distinct species, he will at the same time attach some adjunct of the *dyslogistic* cast — such as violent, intemperate, extravagant, outrageous, theoretical, speculative, and so forth.

Thus, then, in profession and to appearance, there are, in his conception of the matter, two distinct and opposite species of reform — to one of which his approbation, to the other his disapprobation, is attached. But the species to which his approbation is attached is an *empty* species, — a species in which no individual is, or is intended to be, contained.

The species to which his disapprobation is attached, is, on the contrary, a crowded species, a receptacle in which the whole contents of the *genus* — of the genus *reform* — are intended to be included.

CHAPTER VII.

POPULAR CORRUPTION — (*ad superbiam.*)

Exposition. — The instrument of deception, of which the argument here in question is composed, may be thus expressed: — The source of corruption is in the minds of the people; so rank and extensively seated is that corruption, that no political reform can ever have any effect in removing it.*

Exposure. — This fallacy consists in giving to the word *corruption*, when applied to the people, a sense altogether indeterminate — a sense in and by which all that is distinctly expressed is the disaffection of the speaker as towards the persons spoken of, imputing to them a bad moral character or cast of mind, but without any intimation given of the particular nature of it.

It is the result of a thick confusion of ideas, whether sincere, or affected for the purpose.

In the case of a parliamentary election, each elector acts as a trustee for himself and for all the other members of the community, in the exercise of the branch of political power here in question. If, by the manner in which his vote is received from him, he is precluded (as by ballot) from the possibility of promoting his own particular interest, to the prejudice of the remainder of the universal interest, — the only interest of his which he can entertain a prospect of promoting by such his vote, is his share of the universal interest: and for

* This was an argument brought forward against parliamentary reform by William Windham in the House of Commons, and by him insisted on with great emphasis. This man was among the disciples, imitators of, and co-operators with, Edmund Burke — that Edmund Burke with whom the subject-many were the swinish multitude: — swinish in nature, and apt therefore to receive the treatment which is apt to be given to swine. In private life, that is, in their dealings with those who were immediately about them — at any rate, such of them as were of their own class — many of these men, many of these haters and calumniators of mankind at large, are not unamiable; but, seduced by that sinister interest which is possessed by them in common, they encourage in one another the anti-social affection in the case where it operates upon the most extensive scale. If, while thus encouraging himself in the hating and contemning the people, a man of this cast finds himself hated by them, the fault is surely more in him than them; and, whatever it may happen to him to suffer from it, he has himself to thank for it.

doing this, he sees before him no other possible means than the contributing to place the share of power attached to the seat in question in the hands of that candidate who is likely to render most service to the universal interest.

Now, how inconsiderable soever may be in his eyes this his share in the universal interest, still it will be sufficient to turn the scale where there is nothing in the opposite scale: and, by the supposition, the emptiness of the opposite scale has been secured in the mode of election by ballot, where the secresy thereby endeavoured at is accomplished, as to so complete a certainty it may be. If, then, to continue the allusion, the value of his share in the universal interest, in his eyes, is such as to overcome the love of ease — the aversion to labour — he will repair to the place, and give his vote to that candidate who, in his eyes, is likely to do most service to the universal interest: if it be not sufficient to overcome that resisting force, he will then forbear to give his vote; and though he will do no good to the universal interest, he will do no harm to it.

Thus it is that, under an apposite system of election procedure, supposing them in the account of self-regarding prudence equal, the least benevolent set of men will, on this occasion, render as much service to the universal interest as the most benevolent: the least benevolent, if that be what is meant by the *most* corrupt; and if that is not meant, nothing which is to the purpose, nor in short anything which is determinate, is meant.

On the other hand, in so far as the system of election is so ordered, that by the manner in which he gives his vote a man is enabled to promote his own separate interest, what is sufficiently notorious is, that no ordinary portion of benevolence in the shape of public spirit will suffice to prevent the breach of trust in question from being committed.

In the case, therefore, of the subject-many, to whom exclusively it was applied, the word *corruption* has no determinate and intelligible application. But to the class of the ruling few, it has a perfectly intelligible application — application in a sense in which the truth of it is as notorious as the existence of the sun at noonday. Pretending to be all of them chosen by the subject-many,—chosen, in fact, a very small proportion of them in that manner — the rest by one another, — they act in the character of trustees for the subject-many, bound to support the interest of the subject-many: instead of so doing, being with money exacted from the subject-*many* bribed by one another acting under the ruling *one*, they act in constant breach of such their trust, serving in all things their own particular and sinister interests, at the expense and to the sacrifice of that interest of the subject-many, which, together with that of the ruling few, composes and constitutes the universal interest. *Corrupt*, *corruption*, *corruptors*, *corruptionist*, applied to conduct such as hath been just described, — the meaning given to these terms wants assuredly nothing of being sufficiently intelligible.

A circumstance that renders this fallacy in a peculiar degree insidious and dangerous, is a sort of obscure reference made by it to certain religious notions — to the doctrine of original sin as delivered in the compendium of Church of England faith, termed the 39 articles.

Into that doctrine, considered in a religious point of view, it is not necessary on this occasion to make any inquiry. The field here in question is the field of politics; and, applied to this field, the fallacy in question seeks to lay the axe to the root of all government. It applies not only to *this*, but to all other remedies against that preponderance of self-regarding over social interest and affection, which is essential to man's existence, but which, for the creation and preservation of political society, and thence for his well-being in it, requires to be checked — checked by a force formed within itself. It goes to the exclusion of all laws, and in particular of all penal laws; for if, for remedy to what is amiss, nothing is to be attempted by arrangements which, such as those relative to the principle and mode of election as applied to rulers, bring with them no punishment — no infliction, — how much less should the accomplishment of any such object be attempted by means so expensive and afflictive as those applied by penal laws!

By the employment given to this fallacy, the employer of it afforded himself a double gratification: he afforded an immediate gratification to his own anti-social pride and insolence, while he afforded to his argument a promise of efficiency, by the food it supplied to the same appetite in the breasts of his auditors, bound to him, as he saw them to be, by a community of sinister interest.

Out of the very sink of immorality was this fallacy drawn: a sentiment of hatred and contempt, of which not only all the man's fellow-countrymen were the declared, but all mankind in at least equal degree were the naturally supposable object: — "So bad are they in themselves, no matter how badly they are treated: they cannot be treated worse than they deserve: Of a bad bargain (says the proverb) make the best; of so bad a crew, let us make the best for ourselves: no matter what they suffer, be it what it may, they deserve it." If Nero had thought it worth his while to look out for a justification, he could not have found a more apt one than this: an argument which, while it harmonized so entirely with the worst passions of the

worst men, screened its true nature in some measure from the observation of better men, by the cloud of confusion in which it wrapped itself.

In regard to corruption and uncorruption, — or to speak less ambiguously, in regard to vice and virtue, — how then stands the plain and real truth? That in the ruling few there is most vice and corruption, because in their hands has been the power of serving their own private and sinister interest, at the expense of the universal interest: and in so doing, they have, in the design and with the effect of making instruments of one another for the accomplishment of that perpetual object, been the disseminators of vice and corruption: — That in the subject-many, there has been least of vice and corruption, because they have not been in so large a degree partakers in that sinister interest, and have thus been left free to pursue the track pointed out to them, partly by men who have found a personal interest in giving to their conduct a universally beneficial direction — partly by discerning and uncorrupted men, who, lovers of their country and mankind, have not been in the way of having that generous affection overpowered in their breasts by any particular self-regarding interest.

Nearly akin to the cry of popular corruption is language commonly used to the following effect: — "Instead of reforming others — instead of reforming your betters, instead of reforming the state, the constitution, the church, everything that is most excellent, — let each man reform himself — let him look at home; he will find there enough to do, and what is in his power, without looking abroad and aiming at what is out of his power," &c. &c.

Language to this effect may at all times be heard from anti-reformists—always, as the tone of it manifests, accompanied with an air of triumph — the triumph of superior wisdom over shallow and presumptuous arrogance.

One feature which helps to distinguish it from the cry of popular corruption, is the tacit assumption that, between the operation condemned and the operation recommended, incompatibility has place: than which, when once brought clearly to view, nothing, it will be seen, can be more groundless.

Certain it is, that if every man's time and labour is exclusively employed in the correcting of his own personal imperfections, no part of it will be employed in the endeavour to correct the imperfections and abuses which have place in the government; and thus the mass of those imperfections and abuses will go on, never diminishing, but perpetually increasing with the torments of those who suffer by them, and the comforts of those who profit by them: which is exactly what is wanted.

CHAPTER VIII.

OBSERVATIONS ON THE SEVEN PRECEDING FALLACIES.

IN the seven preceding fallacies, and in others of a similar nature, the device resorted to is uniformly the same, and consists in entirely avoiding the question in debate, by substituting general and ambiguous terms in the place of clear and particular appellatives.

In other fallacies, the argument advanced is generally irrelevant, but argument of some kind they do contain. In these, argument there is none; *Sunt verba et voces prætereàque nihil.*

To find the only word that will suit his purpose, the defender of corruption is obliged to make an ascent in the scale of generalization — to soar into the region of vague generalities, till he comes to a word by the extensiveness of whose import he is enabled, so by confounding language to confound conceptions, as without general and immediate fear of detection to defend, with a chance of success, an object, of the defence of which there would, under its proper and peculiar name, be no hope.

When of two terms — viz. a generic term, and a special term included under it — the specific term alone is proper, *i.e.* the proposition into the composition of which it enters, true; the generic term, if substituted to it, is ambiguous; and of the ambiguity, if the effect of it is not perceived, the consequence is error and deception.

Opposite to this *aërial* mode of contestation, is the mode already known and designated by the appellation of *close reasoning.*

In proportion as a man's mode of reasoning is close (always supposing his intention honest,) for the designation of every object which he has occasion to bring to view, he employs in preference the most particular expression that he can find — that which is best adapted to the purpose of bringing to view everything which it is its object to bring to view, as clear as possible from everything which the purpose does not require to be brought, and which in consequence it is his endeavour to avoid bringing to view.

In proportion as a man is desirous of contributing on every occasion to the welfare of the community, and at the same time skilled in the means that most directly and certainly lead to the attainment of that end, he will, on the occasion of the language employed by him in the designation of each measure, look out for that plan of nomenclature and classification by which the degree and mode of its conduciveness or repugnancy to that end may be the more easily and correctly judged of.

Thus, in regard to offences, — acts which on account of their adverseness to the general

welfare are objects meet for discouragement — for prohibition — and in case of necessity, for punishment, — not content with the employing for the designation of each such act in particular, that mode of expression by which every individual act partaking of the common nature indicated by the generic term may be brought to view, to the exclusion of every act not partaking of that common nature, he will, for the designation of the relation it bears to other offences, and of the place which it occupies in the aggregate assemblage of these obnoxious acts, find for it and assign to it some such more general and extensive appellation as shall give intimation of the *mode* in which the wound given by it to the general welfare is perceptible.

1. Offences against individuals other than a man's self, and those assignable individuals; 2. Against a man's self: 3. Against this or that particular class of the community; 4. Against the whole community without distinction.

In the case of individuals,—offences against person, against reputation, against property, against condition in life — and so on through the other classes above designated.*

For the opposite reason,—in proportion as, without regard to, and to the sacrifice of, the general welfare, a man is desirous of promoting his own personal or any other private interest, he will, on the occasion of the language employed in the designation of each measure, look out for that plan of nomenclature and classification, by which the real tendency of the measure to which he proposes to give birth or support, shall be as effectually masked as possible — rendered as difficult as possible to be comprehended and judged of.

In the English law, under the principle of arrangement—which till comparatively of late years was the only one, and which is still the predominant one—such were the groupes into which, by the classical denominations employed, they were huddled together, that by those denominations not any the slightest intimation was given of the nature and mischief of the offences respectively contained under them. Treasons, felonies unclergyable, felonies clergyable, premunires, misdemeanors.

By the four first of these five denominations, what is designated is, not the offence itself, but the treatment given to the offender in respect of it in the way of punishment: by the other denomination, not so much as even that — only that the act is treated on the footing of an offence, and on that score made punishable: it is the miscellaneous class, the contents of which are composed of all such offences as are not comprised under any of the others.

To what cause can a scheme of arrangement so incompatible with clear conception and useful instruction be ascribed?

Its creation may be traced to one source: its continuance to another. For its creation (such is its antiquity,) the weakness of the public intellect presents an adequate cause. Of treason and felony — terms imported at the Norman conquest with the rest of the nomenclature of the feudal system — the origin is lost in the darkness of primæval barbarism: religion — a perversion of the Christian religion, gave birth, after a hard and long labour, to the distinction between clergyable and unclergyable: religion, by a further perversion, gave birth to *premunires* in the reign of Edward III.

To the designs of those whose interest it is that misrule in all its shapes should be perpetuated, and thence, that useful information, by which it might be put to shame, and in time to flight, should as long as possible be excluded, nothing could be more serviceable than this primæval imbecility. Under these denominations in general, and in particular under felony, acts of any description are capable of being ranked with equal propriety, or rather with equal absence of impropriety: acts of any description whatsoever, and consequently acts altogether pure from any of those mischievous consequences from which alone any sufficient warrant for subjecting the agents to punishment can be found; and offences thus clear of every really mischievous quality have accordingly been created, and still continue in existence, in convenient abundance.

By this contrivance, the open tyranny of the lawyer-led legislator, and the covert tyranny of the law-making judge, are placed at the most perfect ease. The keenest eye cannot descry the felonies destined to be created by the touch of the sceptre upon the pattern of the old: the liveliest imagination cannot pourtray to itself the innoxious acts destined to be fashioned or swollen into felonies.

Analogous to this ancient English system — correspondent and analogous both as to the effect itself and as to its cause, is the system lately brought out by the legislators of France and their forced imitators in Germany. *Faute, contravention, délit, crime* — classes rising one above another in a climax of severity, — all of them, designative how indeterminately soever, rather of the treatment to which at the hands of the judge, the agent is subjected, than of the sort of act for which he is subjected to that treatment — much less of the ground, or reason, on which (regard being had to the quality and quantity of mischief) it is thought fit he shall be so dealt with.

Lawyer-craft, in alliance with political tyranny, may be marked out as the source of this confusion in the English case; lawyer-craft in subjection to political tyranny, in the French case.

* See *Principles of Morals and Legislation*, Ch. XVIII. Vol. I. p. 96, *et seq.*

In England, it is the interest of the man of law that the rule of action should be, and continue, in a state of as general uncertainty and incognoscibility as possible: that on condition of pronouncing on each occasion a portion of the flash language adapted to that purpose, he may, in his state of law-adviser and advocate, be master of men's purses; in his state of judge, — of purse, reputation, condition in life, and life itself, to as complete a degree, and with as little odium and suspicion as possible. This is the state of things which it always has been, and will be his interest to perpetuate: and this is the state of things which hitherto it has been in his power to continue, and which accordingly does to this day continue in existence.

In France, where the man of law is not the ally of the politician, but his slave, that which it is not the interest of the politician to keep out of the view of the subject, is — what the law *is;* — that which it is his interest to keep (nor even that in all parts) out of the view of the subject, is — what it is for the interest of the subject that the law *should be;* — what, in a word, the law ought to be.

Having brought the rule of action within a compass, the narrowness of which, in respect of the quantity of words, has never, regard being had to the amplitude of the matter, yet been equalled, the tyrant of France has by this one act of charity displayed a quantity of merit, ample enough of itself to form a covering to no inconsiderable a portion of his sins.

But the exemplifications of vague generalities afforded by these systems of classification are sufficiently striking. To save the authors of the systems from ranking any one of the offences in question under a denomination which would be manifestly inapplicable to it, and from the discredit which would attach to them from such a source, — ascending to a superior height in the logical scale — in the scale of genera and species, — they provide a set of denominations so boundless in their extent, as to be capable without impropriety of including any objects whatsoever on which it might be found convenient to stamp the factitious quality desired. Noxiousness to other individuals in this or that way — noxiousness to a person himself in this or that way — noxiousness to a particular class of the community in this or that way — noxiousness to the whole community in this or that way, — these are qualities which it is not in the power of despotism to communicate to any act of any sort; but to cause such persons as it is performed by to be punished with such or such a punishment, — these are effects which, be the sort of act what it may, it is but too easy for supreme power, in whatsoever hands reposed, to annex to it.

Here, then, are so many instances where the turn of the man in power not being capable of being served, or at least so well served, by giving to an object that which is at once its most particular and most proper name, a name of more general and extensive import is employed for the purpose of favouring that deception, which by the designating of it by such its proper name, would have been dissipated, and thus giving to an exercise of power, which, if rightly denominated, would have been seen to be improper and mischievous, the chance of not appearing in such its true light.

CHAPTER IX.

ANTI-RATIONAL FALLACIES — (*ad verecundiam.*)

Exposition.— When reason is found or supposed to be in opposition to a man's interests, his study will naturally be to render the faculty itself, and whatsoever issues from it, an object of hatred and contempt.

So long as the government contains in it any sort of abuse from which the members of the government, or any of them, derive in any shape a profit, and in the continuance of which they possess a proportionable interest, reason being against them, persons so circumstanced will be in so far against reason.

Instead of reason, we might here say *thought.* Reason is a word that implies not merely the use of the faculty of thinking, but the right use of it: but sooner than fail of its object, the sarcasm and other figures of speech employed upon the occasion are directed not merely against reason, but against *thought* itself; as if there were something in the faculty of thought that rendered the exercise of it incompatible with useful and successful practice.

1. Sometimes a plan, the adoption of which would not suit the official person's interest, is without more ado pronounced a *speculative* one: and by this observation all need of rational and deliberate discussion, — such as objection to the end proposed, as not a fit one — objection to the means employed, as not being fit means, — is considered as being superseded.

To the word *speculative,* for further enforcement, are added or substituted, in a number more or less considerable, other terms, as nearly synonymous to it and to one another, as it is usual for words called *synonymous* to be; viz. *theoretical, visionary, chimerical, romantic, utopian.*

2. Sometimes a distinction is taken, and thereupon a concession made. The plan is *good* in *theory,* but it would be *bad in practice; i. e.* its being good in theory does not hinder its being bad in practice.

3. Sometimes, as if in consequence of a further progress made in the art of irrationality, the plan is pronounced to be *too good to be practicable:* and its being so good as it is, is thus represented as the very cause of its being bad in practice.

4. In short, such is the perfection at which this art is at length arrived, that the very circumstanee of a plan's being susceptible of the appellation of a *plan*, has been gravely stated as a circumstance sufficient to warrant its being rejected: rejected, if not with hatred, at any rate with a sort of accompaniment, which to the million is commonly felt still more galling — with contempt.

"Looking at the House of Commons with these views," says a writer on the subject of parliamentary reform, "my object would be to find out its *chief* defects, and to attempt the remedy of these *one by one*. To propose no *system*, *no great project*, nothing which pretended even to the name of a *plan*, but to introduce in a *temperate* and *conciliatory* manner . . . . one or two separate bills."*

In this strain were these men proposed to be addressed, anno 1810, by Mr. Brougham: in this strain were they addressed, anno 1819, by Sir James Mackintosh, in moving for a committee on the penal laws. To give a man any chance of doing anything with them, in this same way they have ever been addressed, and must ever be addressed, till by radical reform (for it cannot be by anything less) the house shall have been purged of a class of men, of whom the most complete inaptitude in respect of every element of appropriate aptitude, is an essential characteristic. In the scale of appropriate probity—in the scale of appropriate intellectual aptitude, to find their level, a man must descend below that of the very dregs of the people. Oh what a picture is here drawn of them, and by so experienced a hand! How cutting, yet how unquestionably just, the perhaps unintended, perhaps intended satire! To avoid awakening the real terrors of some, the sham terrors of others, all consistency, all comprehensive acquaintance with the field of action, must be abjured. When idolatry in all its shapes shall have become extinct, and the words *wise ancestors* no longer an instrument of deception but a by-word, with what scorn will not ancestors such as these be looked back upon by their posterity!

Intimate as is the connexion between all these contrivances, there is however enough of distinction to render them, in this or that point of view, susceptible of a separate exposure.

* This was Brougham: the time about June 1810. Reference is made to the Government periodical called the *Satirist* (by Manners,) June 1810, No. 33, p. 470. But that wretched performance is now pretty well forgotten.

§ 1. *Abuse of the words* Speculative, Theoretical, &c.

Exposure. — On the occasion of these epithets, and the propositions of which they constitute the leading terms, what will be held up to view in the character of a fallacy, is — not the use of them, but merely the abuse.

It may be placed to the account of *abuse* as often as in a serious speech, without the allegation of any specific objection, an epithet of this class bestowed upon the measure is exhibited as containing the expression of a sufficient reason for rejecting it, by putting upon it a mark of reprobation thus contemptuous.

What is altogether out of dispute is, that many and many a measure has been proposed, to which this class of epithets, or some of them, would be justly applicable. But a man's conceptions must be wofully indistinct, or his vocabulary deplorably scanty, if, be the bad measure what it may, he cannot contrive to give intimation of what, in his view, there is bad in it, without employing an epithet, the effect of which is to hold out, as an object of contempt, the very act of thinking — the operation of *thought* itself.

The fear of theory has to a certain extent its foundation in reason. There is a general propensity in those who adopt this or that theory, to push it too far; *i. e.* to set up a general proposition which is not true until certain exceptions have been taken out of it — to set it up without any of those exceptions — to pursue it without regard to the exceptions, — and thence, *pro tanto*, in cases in which it is false, fallacious, repugnant to reason and utility.

The propensity thus to push theory too far is acknowledged to be almost universal.

But what is the just inference? Not that theoretical propositions — *i. e.* propositions of considerable extent — should from such their extent be concluded to be false *in toto;* but only, that in the particular case inquiry should be made, whether, supposing the proposition to be in the character of a general rule generally true, there may not be a case in which, to reduce it within the limits of truth, reason, and utility, an exception ought to be taken out of it.

Every man's knowledge is, in its extent, proportioned to the extent as well as number of those general propositions, of the truth of which, they being true, he has the persuasion in his own mind: in other words, the extent of these his theories comprises the extent of his knowledge.

If, indeed, his theories are false, then, in proportion as they are extensive, he is the more deeply steeped in ignorance and error.

But from the mere circumstances of its being theoretical, by these enemies to know-

ledge its falsehood is inferred as if it were a necessary consequence — with as much reason as if, from a man's speaking, it were inferred as a necessary consequence, that what he speaks must be false.

One would think, that in thinking there were something wicked or else unwise: every body feels or fancies a necessity of disclaiming it. "I am not given to speculation" — "I am no friend to theories." Speculation — theory, — what is it but thinking? Can a man disclaim speculation, can he disclaim theory, without disclaiming thought? If they do not mean thought, they mean nothing; for, unless it be a little more thought than ordinary, theory, speculation, mean nothing.

To escape from the imputation of meditating destruction to mankind, a man must disclaim everything that puts him above the level of a beast.

A plan proposes a wrong end — or, the end being right, proposes a wrong set of means. If this be what a man means, can he not say so? Would not what he says have somewhat more meaning — be a little more consistent with the principles of common sense, with common honesty, than saying of it that it is theoretical — that it is speculative?

§ 2. *Utopian.*

As to the epithet *utopian*, the case in which it is rightly applied seems to be that in which, in the event of the adoption of the proposed plan, felicitous effects are represented as about to take place, no causes adequate to the production of such effects being to be found in it.

In Sir Thomas More's romance, from which the epithet utopian has its origin, a felicitous state of things is announced by the very name.

Considering the age in which he lived, even without adverting to the sort of religion of which he was so honest and pertinacious an adherent, we may be sufficiently assured that the institutions spoken of by him as having been productive of this effect, had, taking them altogether, very little tendency to produce it.

Such, in general, is likely enough to be the case with the portion of political felicity exhibited in any other romance: and thus far the epithet *romantic* is likely enough, though not certain, to be found well applied to any political plan, in the conveyance of which to the notice of the public, any such vehicle is employed. Causes and effects being alike at the command of this species of poet in prose, the honour of any felicitous event is as easily ascribed to *uninfluencing circumstances*, or even to *obstacles*, as to *causes*.

If the established state of things, including the abuse which in so many shapes is interwoven in it, were anything like what the undiscriminating defenders of it represent it as being — viz. a system of perfection — in this actually established system (*real* in so far as abuse and imperfection are ascribed to it — *imaginary* in so far as exemption from such abuse and imperfection is ascribed to it) — might indeed be seen an utopia — a felicitous result, flowing from causes not having it in their nature to be productive of any such effects, but having it in their nature to be productive of contrary effects.

In every department of government, say the advocates of reform, abuses and imperfections are abundant; because the hands in which the powers of government are reposed, have, partly by their own artifice, partly by the supineness of the people, been placed in such circumstances, that abuse in every shape is a source of profit to themselves.

Under these circumstances, if any expectation were really entertained that by these hands any considerable defalcation from the aggregate mass of abuse will ever be made, — to no other expectation can the charge of utopianism be with more propriety applied: effects so produced, would be produced against the force of irresistible obstacles, as well as absolutely without a cause.

But in that same system there has all along been preserved, by the many, a faculty — and that a faculty every now and then, though much too seldom and too weakly, exercised, — of creating, and without very considerable inconvenience or danger to themselves, uneasiness, more or less considerable, to these their rulers. In the state of things thus described, there is nothing of utopianism; for it is matter of universally notorious fact; and in this faculty on the part of the many of creating uneasiness in the bosoms of the few — in this faculty on the part of those who suffer by the abuses of creating uneasiness in the bosoms of those who profit by them, — in this invaluable, and, except in America, unexampled faculty — rests the only chance, the only source of hope.

§ 3. *Good in theory, bad in practice.*

Even in the present stage of civilization, it is almost a rare case, that by reason, looking to the end in view, matters of government are determined: and the cause is, the existence of so many institutions, which being adverse to the only proper end, the greatest happiness of the greatest number, are maintained, because favourable to the interests of the ruling few. Custom, blind custom, established under the dominion of that separate and sinister interest, is the guide by which most operations have been conducted. In so far as the interest of the many has appeared to the governing few to coincide with their own separate interests, in so far it has been pursued — in so far as it has appeared incom-

patible with those interests, it has been neglected or opposed.

One consequence is, that when by accident a plan comes upon the carpet, in the formation of which the only legitimate end of government has been looked to, if the beaten track of custom has in ever so slight a degree been departed from, the practical man, the man of routine, knows not what to make of it: its goodness, if it be good—its badness, if it be bad, are alike removed out of the sphere of his observance. If it be conducive to the end, it is more than he can see; for the end is what he has not been used to look to.

In the consideration of any plan, what he has not been used to, is to consider what, in the department in question, is the proper end of every plan that can be presented, and whether the particular plan in question be conducive to that end: what he has been used to, is, to consider whether in the matter and form it be like what he has practised. If in a certain degree unlike, it throws him into a sort of perplexity. If the plan be a good one, and in the form of reasons, the points of advantage whereby it is conducive to the proper end in view have been presented,—and in such sort that he sees not any, the existence of which he feels himself able to contest, nor at the same time any disadvantages which he can present in the character of preponderant ones, — he will be afraid so far to commit himself as to pronounce it a bad one. By way of compounding the matter, and to show his candour, if he be on good terms with you, he will perhaps admit it to be good — viz. in *theory*. But this concession made, — it being admitted and undeniable that theory is one thing and practice another, he will take a distinction, and, to pay him for his concession, propose to you to admit that it is not the thing for practice; in a word, that it is good in theory, bad in practice.

That there have been plans in abundance which have been found bad in practice, and many others, which would, if tried, have proved bad in practice, is altogether out of dispute.

That of each description there have been many which in theory have appeared, and with reference to the judgment of some of the persons by whom they have been considered, have been found *plausible*, is likewise out of dispute.

What is here meant to be denied, is, that a plan, which is essentially incapable of proving good in practice, can with propriety be said to be good in theory.

Whenever, out of a number of circumstances the concurrence of all of which is necessary to the success of a plan, any one is, in the calculation of the effects expected from it, omitted, any such plan will, in proportion to the importance of the omitted circumstance,

be defective in pr
degree of importan
bad one; the disa
plan not finding a c
tageous ones.

When the plan
streets by gas-light
lic by the person w
gave himself out fo
items in the article
article, viz. that o
On the supposition
of them have been
in the plan so exhi
fections were to b
to the persons enga
not merely advant
in the prodigious d
If, on the contrary
ted article were su
tervail the alleged b
then would the pl
undertakers, prove
whole, and in one

But whatever it
theory, having so
it, it cannot but
for every plan in
advantages and di
losses, any item i
or loss omitted, i
nitude of such l
geous soever up
upon the whole.

In the line of
that have be
government fo
money given
practice.

But if th
is because th
the account
circumstanc
der the pla
the whole,

This c
which fr
been re
capital b
fort by

Of th
these
hand
the w
havin

have made a sacrifice of his or their personal interest to the interest of the whole. Where it is only on the part of some one individual, or very small number of individuals, that a sacrifice of this sort is reckoned upon, the success of the plan is not altogether without the sphere of moral possibility; because instances of a disposition of this sort, though extremely rare, are not altogether without example: by religious hopes and fears, by philanthropy, by secret ambition, such miracles have now and then been wrought. But when it is on the part of a body of men or a multitude of individuals taken at random, that any such sacrifice is reckoned upon, then it is that in speaking of the plan the term *utopian* may without impropriety be applied.

In this case, — if, neglecting the question of practicability, — on the mere consideration of the nature of the results, the production of which is aimed at by the plan, it can with propriety be termed a good one, the observation, *too good to be practicable*, cannot justly be accused of want of truth.

But it is not any such intimation that, by those in whose mouths this observation is most in use, is meant to be conveyed. The description of persons by whom chiefly, if not exclusively, it is employed, are those who, regarding a plan as being adverse to their interests, and not finding it on the ground of general utility exposed to any preponderant objection, have recourse to this objection in the character of an instrument of contempt, in the view of preventing those from looking into it, who might otherwise have been so disposed.

It is by the fear of seeing it practised, that they are drawn to speak of it as impracticable.

In the character of opposers of a plan, of the goodness of which — that is, of its conduciveness to the welfare of the whole community taken together — they are themselves persuaded, it cannot be their intention or wish to exhibit themselves: it is not, therefore, in any such property of the plan that it can be their aim to engage those on whom it depends, to look for the cause of the impracticability which they impute to it.

Under favour of such observation as may have been made of the instances in which plans — the goodness of which, supposing them carried into effect, has been beyond dispute — have failed of success, what they aim at is the producing, in superficial minds, the idea of a universal and natural connexion between extraordinary and extensive goodness and impracticability: that so often as upon the face of any plan the marks of extraordinary and extensive utility are discernible, these marks may, as it were by a signal, have the effect of inducing a man to turn aside from the plan, and, whether in the way of neglect and non-support, or in the way of active opposition, to bestow on it the same treatment that he would be justified in bestowing upon a bad one.

"Upon the face of it, it carries that air of plausibility, that, if you were not upon your guard, might engage you to bestow more or less of your attention upon it. But were you to take the trouble, you would find that, as it is with all these plans that promise so much, practicability would at last be wanting to it. To save yourself from this trouble, the wisest course you can take, is, therefore, to put the plan aside, and think no more about the matter."

There is a particular sort of grin — a grin of malicious triumph — a grin made up of malicious triumph, with a dash of concealed foreboding and trepidation at the bottom of it — that forms a natural accompaniment of this fallacy, when vented by any of the sworn defenders of abuse: and Milton, instead of cramming all his angels of the African complexion into the divinity school disputing about predestination, should have employed part of them at least in practising this grin, with the corresponding fallacy, before a looking-glass.

Proportioned to the difficulty of persuading men to regard a plan as otherwise than beneficial, supposing it carried into effect, is the need of all such arguments or phrases as present a chance of persuading them to regard it as impracticable: and according to the sort of man you have to deal with, you accompany it with the grin of triumph, or with the grimace of regret and lamentation.

There is a class of predictions, the tendency and object of which is to contribute to their own accomplishment; and in the number of them is the prediction involved in this fallacy. When objections on the ground of utility are hopeless, or have been made the most of, objections on the ground of practicability still present an additional resource: by these, men who, being convinced of the utility of the plan, are in ever so great a degree well-wishers to it, may be turned aside from it: and the best garb to assume for the purpose of the attempt, is that of one who is a well-wisher likewise.

Till the examples are before his eyes, it will not be easy for a man who has not himself made the observation, to conceive to what a pitch of audacity political improbity is capable of soaring — how completely, when an opportunity that seems favourable presents itself, the mask will sometimes be taken off — what thorough confidence there is in the complicity or in the imbecility of hearers or readers.

If to say *a good thing is a good thing* is nugatory, and, as such, foolish language — what shall we say of him who stands up boldly and says, to aim at doing good is a bad thing?

In so many words, it may be questioned whether any such thing has yet been said: but what is absolutely next to it, scarce distinguishable from it, and in substance the same thing, has actually been said over and over. To aim at perfection, has been pronounced to be utter folly or wickedness; and both or either at the extreme. To say that man (the species called *man*) has so much as a tendency to better himself, and that the range of such tendency has no certain limits, — this has been — *speculation:* propositions or observations to that effect have also been set down as a mark of wickedness. "By Priestley, an observation to this effect has somewhere or other been made: by Godwin, an observation to this effect has somewhere or other been made: by Condorcet, or some other Frenchman or Frenchmen of the class of those who, for the purpose of holding them up to execration, are called philosophers, an observation to this effect has somewhere or other been made.

"By this mark, with or without the aid of any other, these men, together with other men of the same leaven, have proved themselves the enemies of mankind: and you too, whosoever you are, if you dare to maintain the same heresy, you also are an enemy to mankind."

In vain would you reply to him, if he be an official man:—Sir, Mr. Chalmers who, like yourself, was an official man, has maintained this tendency, and written a book, which from beginning to end is a demonstration of it as clear and undeniable as Euclid's: and Mr. Chalmers is neither a madman nor an enemy to mankind.

In vain would you reply to him, if he call himself a Christian: — Sir, Jesus said to his disciples, and to you if you would be one of them, "Be ye perfect, even as our Father in heaven is perfect;" and in so doing, has not only assumed the tendency, but commanded it to be encouraged and carried to its utmost possible length.

By observations such as these, may the sort of man in question be perhaps for a moment silenced: but neither by this, nor anything, nor anybody, though one rose from the dead, would he be converted.

To various descriptions of persons, over and above those who are in the secret, a fallacy of this class is in a singular degree acceptable and conciliating: —

1. To all idle men — all haters of business; a considerable class, where a share in the sovereignty of an empire such as ours is parcelled out into portions which are private property — where electors' votes are free in appearance only, and scarcely in appearance — and where the votes that are sold for money are in fact among the freest that are to be found.

2. All ignorant men — all who, for want of due and appropriate instruction, feeling themselves incapable of judging on any question on its own merits, look out with eagerness for such commodious and reputation-saving grounds.

3. All dull and stupid men; — in whose instance, information — reading — such as has fallen to their lot, has not yet been sufficient to enable them to determine a question on its own merits.

When a train of argument — when but a single argument, is presented, that requires thought — an operation so troublesome and laborious as that which goes by the name of *thought*, — an expression of scorn levelled at the author or supposed author of this trouble, is as far as it goes, a just, howsoever scanty and inadequate, punishment for the disturbance attempted to be given to honourable repose.

Under the name of theory, &c., what is it that to men of this description is so odious? What but reference to the *end*—to that which, on that part of the field of thought and action which is in question, is, or at any rate ought to be, the end pursued, and thence, in every case, the end in view — (how often must it, and ever in vain, be repeated?)— the greatest happiness of the greatest number? But were reference made to this end — to this inflexible standard — everything almost they do — everything almost they support — would stand condemned. What, then, shall be the standard? Custom — custom: custom being their own practice, blindly imitating the practice of men in the same situations, put in motion and governed by the same sinister interests.

CHAPTER X.

PARADOXICAL ASSERTION — (*ad judicium.*)

1. *Dangerousness of the principle of utility.* 2. *Uselessness of classification.* 3. *Mischievousness of simplification.* 4. *Disinterestedness a mark of profligacy.*

Exposition. — When of any measure, practice, or principle, the utility is too far above dispute to be capable of being impeached by reasoning, a rhetorician to whose interests or views it has appeared adverse, has in some instances, in a sort of fit of desperation, made this attack upon it; taking up the word or set of words commonly employed for the designation of it, without any such attempt as that of opposing it by any specific objection, he has assailed it with some vehement note of reprobation or strain of invective, in which the mischievousness or folly of it has been taken for granted, as if it were undeniable.

Exposure is a sort of process of which the device in question is scarce susceptible: but for the purpose of exposition, an example or two may have its use.

Utility, method, simplification, reason, sin-

cerity. By a person unexperienced in the arts of political and verbal warfare, it would not readily be imagined that entities like these should, by any man laying claim to the distinguishing attribute of man, be pointed out as fit objects of hatred and contempt: yet so it is.

1. *As to Utility.*— Already has been named "a great character in a high situation," by whom the principle of utility was pronounced a *dangerous* one.* A book might be mentioned, and one of no small celebrity,† in which the same principle — the principle of utility — has been pronounced useless: — the principle itself, and consequently every investigation in which, to the purposes of legislation or common life, application is endeavoured to be made of it.

What must be acknowledged is, that to make a right and effectual use of it, requires the concurrence of those requisites which are not always found in company: — invention, discernment, patience, sincerity — each in no inconsiderable degree; while, for the pronouncing of decisions without consulting it, decisions in the *ipse dixit* style, nothing is required but boldness.

Not that, on any occasion on which it promises to suit his purpose, and he feels in himself a capacity to apply it to that purpose, the most decided scorner of it ever fails to make use of it. It is only when, if consulted, its decisions would be against him, or he feels himself awkward at consulting it, that he ever takes upon him to do without it: and to prove anything to be right or wrong, thinks it sufficient for himself to say so.

2. *Classification a bad thing — Good method a bad thing.*

On the same occasion in which a convenience was found in pronouncing the principle of utility useless, the like convenience was found in professing the like contempt for that quality in discourse which goes by the name of good method, or simply, *method*, and that sort of operation called good classification, or simply, *classification*.

When the subject a man undertakes to write upon is to a certain degree extensive— as for example, the science of morals, or that of legislation — whether what a man says be clear or not of falsehood, will depend upon the goodness of the method in which the parts of it have been cast: — 1. If, for example, snow and charcoal were both classed under the same name, and neither of them had any other, — if the question were asked, whether the thing known by that name were white or black, no inconsiderable difficulty would be found in answering it either by a yes or no. 2. And if, under favour of the identity of denomination, sugar of lead were to be used in a pudding instead of any of the sort of sugar usually applied to that purpose, practical inconveniences analogous to those which were experienced by Thornbury from eating pancake,‡ might probably be found to result from the mistake thus exemplified in the tactical branch of the art or science of life, call it which you please.

In the course of an attempt made‖ to cast the whole multitude of pernicious actions into apt classes, — as a fruit, and proof, and test

* Lord Loughborough, when Attorney-General.[a] The observation made by him in the year 1789 was reported to me presently after it was made. Not till many years after — some time, as I perceive, after what is in the text was written, was the true import perceived by me. The character in which at the time it presented itself to my view, was that of a gross absurdity: its true character was that of deep sagacity. By the principle of utility, what I understood was — that principle which states as the only justifiable end of government, the greatest happiness of the greatest number of the members of the community. At that time I still continued to take for granted (such was my simplicity) that this was the end generally aimed at, though often so widely missed. By those whose desire it was, that on each occasion that end should be attained, it could not without self-contradiction be supposed that the endeavour to attain it could seem dangerous. But Loughborough was too well acquainted with the state of government in this country (not to speak of other countries,) not to know that it is the greatest happiness of the ruling few, and not that of the greatest number, that is the end pursued on each occasion by the ruling few. What, then, was the interest which on that occasion, as on all occasions, that member of the ruling few had at heart, and thence preferably, if not exclusively, in mind? It was, of course, the interest of the ruling few. But the interest of the ruling few is, on the greatest part of the field of government, in a state of continued opposition to that of the greatest number: accordingly, a principle which, in case of competition, and to the extent of the competition, called for sacrifices to be made of the interests of the class to which he belonged, and which alone was the object of his solicitude, could not but in his eyes be a dangerous one. (*See Hist. Pref. to Fragment on Government*, Vol. I. p. 245.)

† The Edinburgh Review.

[a] *Note written August* 21, 1819: — "Great characters in high situations," a phrase employed about December 1809 by minister Percival, then Attorney-General, in calling down the vengeance of the law on I forget what alleged libeller, for using the appellation of "the Doctor" in speaking of Lord Sidmouth. By the picture it seemed to give of the character of the prosecution and of the persons who bore a part in it, it made a lasting impression on my mind.

‡ In the pancake in question, which, at a table at the Cape of Good Hope was served up to a company, of which Thornbury, better known by his travels in Japan, was one, white lead was employed instead of flour:—some recovered, and some died.

‖ In a book written anno 1780, published anno 1789, under the title of *Introduction to Morals and Legislation.*—(See Vol. 1. of this collection.)

of the supposed aptitude, about a dozen propositions were mentioned as being capable of being, without any deviation from the truth of things, ascribed to the pernicious acts respectively collected together under one denomination by the names respectively assigned to the four classes to which they were referred.

On the same occasion, intimation was likewise given, that in the system of law and law terms in use for the designation of offences among English lawyers, no such fair general denomination could be found, to the contents of which an equal number, and it might perhaps have been added, any number at all, of common propositions could, without error and falsehood, be ascribed. A system of classification and nomenclature which can never be employed without confounding, at every turn, objects which, to prevent practical and painful accidents, require to be distinguished, must, by every man who has not a decided interest in maintaining the contrary, be acknowledged to be very ill adapted to those which are, or at least which ought to be, its purposes.

Here, then, was an intimation given, that the whole system of English penal law is in an extreme degree ill adapted to what ought to be the purposes of every system of law; and an implied invitation to those, if any such there were, who being conversant in the subject of law, had any desire to see it well adapted to its professed purposes, to show that the system was not, in respect of the points indicated, a bad one—the radically bad one it was there represented to be,—or else to take measures for making it better. But it being the interest of every one who is most conversant with this subject, that the whole system, instead of being as good as it can be made, should be as bad as those who live under it will endure to see it, the invitation could not in either branch be accepted.

In any other branch of science that can be named—medicine, chemistry, natural history in all its branches, the progress made in every other respect is acknowledged to be commensurate to, and at once effect and cause, in relation to the progress made in the art of classification: nor in any one of those branches of science, would it perhaps be easy to find a single individual by whom the operation of classification would be spoken of as anything below the highest rank in the order of importance. Why this difference? Because in any one of these branches of science there is scarce an individual to whose interest the advancement of the science is opposed: whereas among the professors of the law there exists not an individual to whose interest the advancement of the art of legislation is not opposed—is not either immediately detrimental or ultimately dangerous.

3. *Simplification.*

By the opposite vice, *complication*, every evil opposite to the ends of justice,—viz. uncertainty of the law itself, unnecessary delay, expense, and vexation, in respect of the execution — is either produced or aggravated.* Consequently, to every one by whom any wish is entertained of seeing the mass of these evils reduced, a fervent desire is entertained of seeing the virtue of simplification infused into the system of law and judicial procedure. On an occasion that took place not long ago, if the account of the debates can be trusted, a gentleman was found resolute and frank enough to stand up and rank this virtue,—if after that, such it may be called — among the worst of vices: the use of it was evidence of Jacobinism — evidence of the circumstantial kind indeed, but sufficiently conclusive.

If, on a declaration to that effect, any sentiment of disapprobation were visible in the language or deportment of that Honourable House, none such are, at least, recorded: and if none such really were perceptible, this circumstance alone might afford no inconsiderable ground for the desire expressed by some, of seeing the character of that Honourable House undergo a thorough change.

4. *Disinterestedness a mark of profligacy.*

In his pamphlet on his Official Economy Bill, to give up official emolument is by Edmund Burke pronounced, in so many words, to be "a mark of the basest profligacy."

On somewhat more defensible grounds might this position itself be pronounced as strong a mark as ever was exhibited, or ever could be exhibited, of the most shameless profligacy.

An assumption contained in it, besides others too numerous to admit of their being detailed here, is — that in the eyes of man there is nothing that has any value—nothing that is capable of actuating and giving direction to his conduct, but the matter of wealth: that the love of reputation and the love of power are themselves, both of them, without efficient power over the human heart.

So opposite is this position of his to the truth, that the less the quantity of money which, in return for his engagement to render official service, a man, not palpably unfit for the business of it, is content to accept, the stronger is the proof, the presumptive evidence thereby afforded, of his aptitude in all points with relation to the business of that office: since it is a proof of his relish for the business — of the pleasure he anticipates from the performance of it.†

* See *Scotch Reform*, Vol. V. *Delay and Complication Tables.*

† See Bentham par Dumont. *Théorie des Peines et des Récompenses: (Rationale of Punishment*, Vol. I. p. 388, and *Rationale of Reward, antea*, p. 189, *et seq.)* and *Defences of*

Blinded by his rage, in this his frantic exclamation, wrung from him by the unquenched thirst for lucre, — this madman, than whom none perhaps was ever more mischievous — this incendiary, who contributed so much more than any other to light up the flames of that war, under the miseries occasioned by which the nation is still groaning, — poured forth the reproach of "the basest profligacy" on the heads of thousands, before whom, had he known who they were, he would have been ready to bow the knee. Not to mention the whole magistracy of the empire, whose office is that of justice of the peace, — among other persons before whom he was in the habit of prostrating himself, of the verbal filth he thus casts around him, one large mass falls upon the head of the Marquess Camden, and from his rebounds upon those other official heads, from which the surrender made of the vast mass of official emolument drew forth the stream of eulogium which the documents of the day present us with.

5. *How to turn this fallacy to account.*

To let off a paradox of this sort with any chance of success, you must not be anything less than the leader of a party. For if you are, instead of gaping and staring at you, men will but laugh at you, or think of something else without so much as laughing at you; because there is no laughing at anything without thinking of it.

Moreover, a thing of this sort succeeds much better in a speech, than in a book or pamphlet — and that for several reasons.

The use of a speech is to carry the measure of the moment; and if the measure be but carried, no matter for the means. The measure being carried, the paradox is seen to be no less absurd and mischievous than it is strange: no matter—the measure is carried: war is declared, or a negotiation for peace broken off. Peace you will have some time or other, but in the meantime the paradox has had its effect. A law has passed; and that law an absurd and mischievous one: some day or other, the mischief may receive a remedy; but that day may not arrive these two or three hundred years.*

In a speech, too, it is all profit — no loss: your point may be gained, or not gained; your reputation remains where it was. It is your speech, or not your speech, whichever is most convenient. To A, who under the notion of its being yours, admires it, it *is* your speech; to B, who, because it is yours, or because it is an absurd and mischievous one, spurns at it, it is *not* your speech. If the words of your paradox are ambiguous, as they will be if they are well and happly chosen, — susceptible of two senses, an innoxious and a noxious one—this is exactly what is wanted. *A*, who on your credit is ready to take it, and to adopt it in the noxious one which suits your purpose, is suffered silently to take it in that noxious one: but if *B*, taking it in the noxious one, attacks you and pushes you too hard, then some adherent of yours (not you yourself, for it would be weak indeed for you to appear in the matter,) some adherent of yours brings out the innocent sense, vows and swears it was *that* meaning that was yours, and belabours poor B with a charge of calumny.

If in the choice of your expression you have been negligent or unfortunate, so that no more than one sense, and that one indefensible, can with any colour of reason be ascribed to it, you thus lose part of your advantage. But still no harm can happen to you: you disavow — that is, your adherent for you disavows — the very words: — and thus everything is as it should be.

Thus it is that from speeches—spoken and unminuted speeches — you derive much the same sort of advantage as is derived from that sort of sham law (which, in so far as it is made by anybody, is made by judges, and is called common or unwritten law) by lawyers: thundering all the while the charge of insincerity or folly in all who have the assurance to ascribe to it either a different word or a different meaning. To the supposed speech, as to the supposed law, they give what words they please, and then to those words they give what meaning they please. The law, indeed, neither has, nor ever had, any determinate form of words belonging to it; whereas the speech could not have been spoken, unless it had had a set, and that a complete one, of determinate words belonging to it. But in the speech — the words never having been committed to writing, or if they have been, evidence of their being the same words not being producible, — the speech-maker is as safe as if he had never uttered any one of those words.

In the intellectual weakness of those on whom, in this form, imposition is endeavoured to be practised — in this degrading weakness, and in the state of servitude in which they are accordingly held by the shackles of authority,† may be seen the cause of that success, and thence of the effrontery and insolence which this species of imposition manifests. In proportion as intellect is weaker and weaker, reason has less and less to hold upon it; au-

Economy against Edmund Burke and George Rose, Vol. V. p. 278, *et seq.*

* Till lately, the country has suffered in a variety of ways by the law made in the reign of Elizabeth to prevent good workmanship: the effect is felt; the cause, men cannot bear to look at.

† See *Ad Verecundiam*, Part I. *Fallacies of Authority.*

thority, fortified by the appearance, real or fallacious, of strong persuasion, more and more.

It is in this way that, strange as at first mention it cannot but appear — it is in this way — and when addressed to minds of such a texture, the more flagrant and outrageous the absurdity, the stronger its persuasive force. Why? Because, without the strongest ground, a persuasion — so strong a persuasion — of the truth of a proposition, at first sight at least so adverse to truth, it is taken for granted, could not have been formed

When the terrors of which religion is the source, are the instruments employed for inculcating it, the strength of the persuasion thus inspired presents little cause for wonder. In the intensity of the exertion made for the purpose of believing — the greater the difficulty, the greater is, in case of success, the merit. Hence that most magnanimous of all conclusions, *credo quia impossibile est*. Higher than this, the force of faith — the force, and consequently the merit — cannot go: by this one bound, the pinnacle is attained; and whatsoever reward Omnipotence has in store for service of this complexion, is placed out of the reach of failure.

Be the absurdity ever so flagrant — the nature of man considered, and how absolute the dominion which is exercised over him by the passions of fear and hope — be the absurdity ever so flagrant, cause of just wonder can never be afforded by any acceptance which it receives, with the support afforded to it by the most irresistible of the passions:

The understanding is not the source — reason is of itself no spring of action: the understanding is but an instrument in the hand of the will: it is by hopes and fears that the *end* of action is determined; — all that reason does, is to find and determine upon the *means:*

But where, at the mere suggestion of a set of men with gowns of a certain form on their backs — where at their mere suggestion (unsupported by any motive of a nature to act on the will), we see men living and acting under the persuasion, that in the vice of lying there is virtue to metamorphose into justice the crime of usurpation; — here, it is not the will that is confounded and overwhelmed: it is the understanding that is deluded.*

CHAPTER XI.

NON-CAUSA PRO CAUSA: OR, CAUSE AND OBSTACLE CONFOUNDED — (*ad judicium.*)

Exposition. — When in a system which has good points in it, you have a set of abuses, or any of them, to defend, — after a general eulogium bestowed on the system, or an indication more or less explicit of the good effects the existence of which is out of dispute, take the abuses you have to defend, either separately or collectively (collectively is the safest course,) and to them ascribe the credit of having given birth to the good effects.

Cùm hoc, ergò propter hoc.

In every political system which is of long standing, and which, not having been produced, any considerable part of it, in prosecution of any comprehensive design, good or bad, but piecemeal at different and distant times, according to the casual and temporary predominance of conflicting interests — whatsoever may be the good or the bad points in the state of things which at any given time constitutes the result of it, among the incidents which may be observed as having place in it, some, upon proper scrutiny and proper distinction made, may be seen to have operated in the character of effective or promotive causes — others, in the character of obstacles or preventives — others, to have been in relation to them, in the character of immaterial incidents, or inoperative circumstances.

In such a system, whatsoever are the abuses or other imperfections in it, and whatsoever are the prosperous results observable in it, these prosperous results will have found, in the abuses and imperfections, not so many efficient or promotive causes, but so many obstacles or preventives.

Meantime, if so you can order matters, that instead of being recognised as having operated in the character of obstacles, the abuses in question shall be believed to have operated in the character of efficient or promotive causes, nothing can contribute more powerfully to the effect which it is your endeavour to produce.

If you cannot so far succeed as to cause the prosperous results in question to be referred to the abuses by which they have been obstructed and retarded, the next thing you are to endeavour at is, to cause them to be

* To form a ground for decision, a judge asserts, as true, some fact which to his knowledge is not true—some fact, for the assertion of which, if, in the station of a witness, and without having for his protection the power of a judge, a man were to venture the assertion of, he would by this same judge be punished with imprisonment and infamy. To screen it from the abhorrence due to it, — this lie, exceeding in wickedness the most wicked of the assertions commonly brought into view under that name, is decked up in the same appellation, *fiction*, which is employed in bringing to view the innoxious and amusing pictures of ideal scenes for which we are indebted to the poetic genius. What you are thus doing with the lie in your mouth, — had you power to do it without the lie? — your lie is a foolish one. Have you no such power? — it is a flagitious one. In this mire may be seen laid the principal part of the foundation of English common law.

scribed to some [illegible] circumstances, having a [illegible] connexion or other — the nearer the better — with the abuses.

At any rate, you will, in as [illegible] upon you, cause the [illegible] in question to be referred to any causes rather than the real ones. For a [illegible] as it becomes manifest what causes they are the results, it will become manifest what other circumstances they have not been the results of. Wherefore, no sooner a [illegible] one of the abuses you have to extirpate considered in the light of law, than a question will be put to you — Well, and this — was it ever the use of [illegible]? In which no answer being found, the consequence is such as need not be mentioned.

Less knowledge being among the number of your most formidable adversaries, your endeavour must of course be to instruct as extensively and promptly as effectually as possible.

Less knowledge intends in a great degree on the [illegible], in each division, to distinguish your [illegible] other, causes, [illegible], and modifying circumstances, — these, therefore, it must in every division be your study to [illegible] as effectually as possible.

Example. — Example 1. — Great Government. Chance represented as a cause. — The influence of the Crown.

If the monarchy of the constitution of the Roman united monarchy, as compared with all modern or less limited monarchies, be a Roman a most distinguished, and regarded as indemonstrable, and the characteristic by which that limited monarchy is distinguished from all modern and less limited monarchies, is the influence, the superior influence of the mass of the people — the influence exercised by the will of the nominees of the people in the wills of the nominees of the king, and thence in the conduct of the king himself, — a circumstance which, if so far as it operates, diminishes the efficiency of this influence, and in many, if not most instances, may be seen to destroy that efficiency altogether, cannot with propriety be numbered among the causes of the aforesaid influence, but must, in the contrary, be ranked in the account of the modifications that [illegible] it.

A [illegible] fact, the mere [illegible] of the House of Commons — [illegible] nominees of the mass of the people — [illegible] to the nominees of the king, [illegible] the [illegible] of the executive department [illegible] majority of votes, — [illegible] to be [illegible] in the [illegible] of [illegible]. In case of [illegible] [illegible] without the [illegible] the House of Lords — [illegible] the purpose of [illegible] without any such [illegible].

[illegible]

[illegible]

[illegible]

of the city of Jerusalem? Was it Peter, was it James, was it John — was it not Dives, that used to clothe himself in purple and fine linen? Walking from place to place to preach, comprised their occupations. If yours were the same, would you not be rather more like them than you are?

2. Because there is a general feeling, though not expressed in words, from a sort of decency and compassion, that a legislative assembly is not a fit place for a man who is not at liberty to speak what he thinks; and who, should he be bold enough to bring to view any one of the plainest dictates of political utility, might be put to silence and confounded by reference to this or that one of the thirty-nine Articles, or by this or that text of Scripture, out of a Testament Old or New.

So many things of which, however improbable, he is bound to profess his belief.

So many things which, however indefensible by reason, he would be bound, were he to open his mouth, to defend.

Matter of duty to him to be — matter of infamy not to be — steeled against conviction.

So many vulnerable parts with which he is embarrassed, and with which an antagonist of his is not embarrassed.

So many chains with which he is shackled, and with which an antagonist of his is not shackled.

A man, whose misfortune should it be to hear a word or two of reason, it would be his duty not to listen to it.

To a man thus circumstanced, to talk reason would have something ungenerous in it and indecorous: it would be as if a man should set about talking indecently to his daughter or his wife.

In vain would they answer, what has been so often answered, that neither Jesus nor his Apostles ever meant what they said — that everything is to be explained and explained away. By answers of this sort, those and those alone would be satisfied, whose satisfaction with everything that is established is immoveable, and not susceptible of experiencing diminution from any objections, or increase from any answers.

Example 3. — *Effect, Useful national learning: Obstacle stated as a cause,—system of education pursued in Church-of-England Universities.*

On the subject of learning, to the question whether, with relation to it, the universities might with more propriety be considered as causes or as obstacles, much need not here be said, after what has been said on the subject by the Reverend Vicesimus Knox, and of late by the *Edinburgh Review*.

If these fragments, with the exception of the scurrilous parts of the Review, were put together and made into a book, a most instructive addition to it might be made by a history of the treatment experienced from this quarter by the inventions of the Quaker Lancaster. In the age of academical and right reverend orthodoxy, learning, it would there be seen, is, even to the very first rudiments of it, an object of terror and hatred.

Of this Quaker, though he undertook not to attempt to make converts, what is certain is, that no school would, under his management, have been a school of perjury: and since, in so far as by his means the elementary parts of knowledge made their way among the people, intellectual light would take place of intellectual darkness, he experienced the hostility that might so naturally have been expected from those who love darkness better than light; to wit, for a reason which may be seen in that book, the knowledge of which it was his object to diffuse, as it was theirs to confine and stifle it.

In virtue and knowledge—in every feature of felicity, the empire of Montezuma outshines, as everybody knows, all the surrounding states, even the commonwealth of Tlascala not excepted.

Where (said an inquirer once, to the high priest of the temple of Vitzlipultzli,) where is it that we are to look for the true cause of so glorious a pre-eminence? "Look for it!" answered the holy pontiff— "where shouldst thou look for it, blind sceptic, but in the copiousness of the streams in which the sweet and precious blood of innocents flows daily down the altars of the great God?"

"Yes," answered in full convocation and full chorus the archbishops, bishops, deans, canons, and prebends of the religion of Vitzlipultzli: — "Yes," answered in semi-chorus the vice-chancellor, with all the doctors, both the proctors and masters regent and non-regent of the as yet uncatholicized university of Mexico: — "Yes, in the copiousness of the streams in which the sweet and precious blood of innocents flows daily down the altars of the great God."

Example 4.—*Effect, National virtue: Obstacle represented as a cause, — opulence of the clergy.*

In several former works it has been shown,* that, be the effect what it may, — in so far as money, or in any other shape, the matter of reward, is, in the character of an efficient cause, employed in the view or under the notion of promoting it, — what degree of efficiency shall attend in such case the use made of the instrument, depends not so much

* *Rationale of Punishment, Do. of Reward; Defence of Economy against Burke*, and *Do. against Rose, ut supra; Church-of-Englandism Examined*, 1818.

upon its magnitude as upon the manner in which, and the skill with which, it is applied; and in particular, that in so far as that instrument is composed of public money, it is no less possible, and in some cases much more frequent, so to apply it, that the production of that effect shall, instead of being promoted, be prevented: that when, as for working, a man is paid alike whether he does work or whether he does none, to expect work from him is impossible, and to pretend to expect it, mere mockery: that after engaging to render an habitual course of service (for the rendering of which no extraordinary degree of talent or alacrity is necessary,) a fit person has received that which is necessary to obtain his free engagement for the rendering it, every penny added has no other tendency than to afford him means and incentives to relinquish his duties for whatever other occupations are more suitable to his taste.

Now if this be true of all men, it is true of every man: and it is not a man's being called prebend, canon, dean, bishop, or even archbishop, that will in his case, or in any other person's case, make it false.

It is a proposition that, be it ever so true, is not evident, but requires argument deduced from experience to render it so, that by such service as is rendered by the English clergy, virtue is in any degree promoted.

It is a proposition that, be it to a certain extent ever so true, is to a certain extent notoriously not true, that to the procurement of such service, money from any source is necessary. For without a particle of money passing from hand to hand, service of this sort is rendered by men one towards another, viz. among the people called Quakers: and if for the exhibiting to view the comparative degrees of efficiency with which service of this sort is rendered — work of this sort done — who is there that will take upon him to deny that the highest degree of the scale would be found occupied by the people called Quakers, or disputed with them by the people called Methodists — while the very lowest would be recognised as being occupied without dispute by the members sacred or profane of the established and most opulently endowed Church of England?

It is another proposition that still remains to be proved, that, admitting that for the procurement of this service — to the whole extent in which for the production of virtue it is wanted — money is necessary; it is also necessary, that for the raising of the necessary quantity, money should, by the power of government, be forced out of the pockets of unwilling contributors.

CHAPTER XII.

PARTIALITY-PREACHER'S ARGUMENT — (*ad judicium.*)

"From the abuse, argue not against the use."

Exposition. — From abuse it is an erorr (it has been said) to argue against use.

The proposition is an absurd one, make the best of it: but the degree of absurdity will depend upon the turn that may be given to the sentence.

Whichsoever be the turn given to it, the plain and undeniable truth of the case, as between use and abuse, will alike serve for the exposure of it.

Be the institution what it may, whatsoever good effects there are that have resulted from it, these constitute, as far as experience goes, the *use* of it: whatsoever ill effects have resulted from it, these, in so far at least as they have been the object of foresight and the result of intention, constitute the *abuse* of it.

Thus as to past results: and the same observation applies to expected future ones.

Exposure. — Now then come the fallacies to the propagation of which it may and must have been directed: —

1. In taking an account of the effects of an institution, you ought to set down all the good effects, and omit all the bad ones.

This is one of the purposes to which it is capable of being applied: this needs not much to be said of it.

2. In taking an account of the effects of an institution good and bad, you ought not to argue against it on the supposition that the sum of the bad ones is greater than the sum of the good ones, merely from the circumstance, that among all its effects taken together, there are some that belong to the bad side of the account.

In this latter sense, such is the character of the maxim, that nothing can be said against the truth of it. As an instruction, it is too obvious to be of any use: in the way of warning, it cannot by possibility do any harm; nor is it altogether out of the sphere of possibility, that in this or that instance it may have its use.

Applied to a man's pecuniary affairs, it amounts to this; viz. Conclude not that a man has no property because he has some debts.

CHAPTER XIII.

THE END JUSTIFIES THE MEANS — (*ad judicium.*)

In this case, surely, if in any, exposition is of itself exposure.

The insertion of this article in the list of fallacies, was suggested by the use made of it in the Courier newspaper of the 27th of

August 1819, as reported and commented upon in the Morning Chronicle of the 28th.*

The end justifies the means. Yes: but on three conditions, any of which failing, no such justification has place: —

1. One is, that the end be good.

2. That the means chosen be either purely good—or if evil, having less evil in them than on a balance there is of real good in the end.

3. That they have more of good in them, or less of evil, as the case may be, than any others, by the employment of which the end might have been attained.

Laying out of the case these restrictions, note the absurdities that would follow.

Acquisition of a penny loaf is the end I aim at. The goodness of it is indisputable. If, by the goodness of the end, any means employed in the attainment of it are justified, instead of a penny, I may give a pound for it: thus stands the justification on the ground of prudence. Or, instead of giving a penny for it, I may cut the baker's throat, and thus get it for nothing: and thus stands the justification on the ground of benevolence and beneficence.

In politics, what is the use of this fallacy? In the mouth of one whose station is among the INS, it will serve for whatsoever cruelties those by whom power is exercised may at any time find a pleasure in committing on those over whom power is exercised, for the purpose of confirming themselves in the power of committing more such cruelties.

The INS, as such, have the power to commit atrocities; and that power having sinister interest for its spur, is never suffered to be idle. For the use of this fallacy, in so far as it can be worth their while to employ a cloak, they have therefore a continual demand.

The OUTS, acting under the impulse of the same spur, sharpened by continual privation and continually repeated disappointment, have on their part a still more urgent demand for the same fallacy, though the opportunities of making application of it but rarely present themselves to their hands.

The oracular party adage, invented by the Whigs — Not men but measures — or, Not measures but men—(for according as you complete the sentence, you may word it either way,) — this bold but slippery instrument of fallacy has manifest alliance with the present. Seating in office fit men, being the end, every thing depending upon that end, and the men in question being the only ones by which it can be attained, no means can be imagined, which by such an end may not be justified.

* The Courier newspaper is, in the other public prints, perpetually spoken of as enjoying the favour of the monarch of the day. I have all all along been upon the watch to see whether a denial in any shape of that assertion would be given: I have never been able to hear of any such thing. The fact admitted, a conclusion which can scarcely be refused is, that the principles manifested in that paper are the principles entertained and acted upon by that royal arbiter of our fate, in whose disposal the lives and fortunes of about twenty millions or thereabout in the three kingdoms, and sixty millions in Asia, are placed. Without deigning to wait for and receive, or if received, to have regard to the evidence on the other side, at the solicitation of Lord Sidmouth, Secretary of State, the Prince Regent, by one letter dated August 1819, bestows his approbation upon the conduct maintained by the Manchester magistrates, on the occasion of the slaughter committed by their officers — by the armed yeomanry—on an unarmed multitude: and by another, dated the same month, upon Sir John Bing, the general commander of the regulars, for the support given by him to it. What shall we say of this? Let prudence give the answer. The secretary is worthy to serve such a sovereign: the sovereign is worthy to be served by such a secretary. Every stroke he adds to his own portrait, the faithful servant adds to that of his royal patron and protector. A complete portrait, thus formed by lines copied from the Courier, would constitute a most instructive and interesting piece.

CHAPTER XIV.

OPPOSER-GENERAL'S JUSTIFICATION: — NOT MEASURES BUT MEN; OR, NOT MEN BUT MEASURES — (*ad invidiam.*)

ACCORDING to the notions commonly entertained of moral duty under the head of probity, and in particular under the head of that branch of probity which consists in sincerity, whatsoever be the nature and extent of the business in question, private or public, it is not right for a man to argue against his own opinion; — when his opinion is so and so, to profess it to be the reverse, and in so doing, to bend the force of his mind to the purpose of causing others to embrace the opinion thus opposite to his real one.

That, in particular, if, being a member of the House of Commons, and in opposition, a measure, which to him seems a proper one, is brought on the carpet on the ministerial side, it is not right that he should declare it to be in his opinion pernicious, and use his endeavours to have it thought so, and treated as such by the House; and so again, if, being on that same side, a measure such as to him appears pernicious, is brought on the carpet on the side of opposition, it is not right that he should declare it to be in his opinion beneficial and fit to be adopted, and accordingly use his endeavours to make it generally thought so, and as such adopted by the House.

An aphorism, said to have been a favourite one with the late Mr. Charles Fox, is the proposition at the head of this chapter.

Not men but measures! or, Not measures but men! — are the two forms, in either of which, according as the ellipsis is filled up, the aphorism may be couched.

Not measures but men! is the more simple expression of the two, it being in that form that the aphorism is marked out for approbation: reprobation being the sentiment attached to its opposite, *Not men but measures!*

If you look to speeches, then comes the constant, and constantly interminable question — what were the words in the speeches? The words are in that case on each occasion genuine or spurious, the interpretation correct or incorrect, according as it suits the purpose of him who is speaking of it, and more particularly of him who spoke it, that it should be.

But on one occasion we have the aphorism from the pen of Charles Fox himself: and then, if applied to the question of sincerity or insincerity, as above, it is found to have no direct bearing on it.

"*Are to be attended to*," are the words employed on this occasion to complete the proposition. "How vain, how idle, how presumptuous," says the declaimer in his attempt to put on the historian, "is the opinion that laws can do everything! and how weak and pernicious the maxim founded upon it, that measures not men, are to be attended to!"

Weak enough, as thus expressed, it must be confessed; and abundantly too weak to be by a statesman considered as worth noticing, even by so vague and ungrounded a note of reprobation. As if any one ever thought of denying that both ought to be "*attended to!*" and as if, even in a debating club, words so vague and unmeaning as "*attended to*" were a fit subject of debate.

What must be confessed is, that to a man who wishes well to his country, and sees a set of men who in his opinion are a bad set, conducting the affairs of it, few things are more provoking than by this or that comparatively unimportant, but so far as it goes beneficial measure, to see them obtain a degree of reputation, of which one effect may be to confirm them in their seat.

But what seems not to have been sufficiently "*attended to*" is, that it is by the badness of their measures, that the only warrant for giving to the men the appellation of bad men, can be grounded: that if they are really the bad men they are supposed to be, have a little patience, and they will come out with some bad measure, against which, it being by the supposition bad, and by yourself looked upon as such, you may, without prejudice to your sincerity, point your attacks: and if no such bad measure ever came from them, the imputation of their being bad men is rather premature.

Distressing indeed to a man of real probity must be the alternative: to see a set of men fixed in this their all-commanding seat, and making a proportionally extensive and pernicious use of it; or, for the purpose of taking what chance is to be had of precluding them from this advantage, to keep on straining every endeavour to make the House and the public look upon as pernicious, a measure, of the utility of which he is himself satisfied.

In the abomination of long and regularly corrupt parliaments lies the cause of this distress.

Under this system, when the whole system of abuses has a determined patron on the throne, and that patron has got a set of ministers that suit this ruling purpose, misrule may swell to such a pitch, that without any one measure in such sort bad that you can fix upon it, and say, this is a sufficient ground for punishment, or even for dismission, the State may be at the brink of ruin: — meantime some measure may be introduced, against which, though good, or at least innoxious of itself, the people, by means of some misrepresentation of matter of fact, or some erroneous opinion or other which prevails among them, may, to the disgrace and expulsion of the ministry, be turned against it; and then comes the distressing alternative.

But were the duration of the assembly short, and the great and surely effective mass of the matter of corruption expelled and kept out of it, no such alternative would ever present itself: the chance of ridding the country of a bad set of ministers would be renewed continually. The question supposed to be tried on each occasion might be the question really tried; whereas at present, on each occasion, the question tried is but one and the same, viz. Shall the ministry, or shall it not, continue?

The question brought on the carpet is like the wager in a feigned issue, a mere farce, which, but for its connexion with the principal question above mentioned, would not be deemed worth trying, and would not be tried.

CHAPTER XV.

REJECTION INSTEAD OF AMENDMENT — (*ad judicium.*)

Exposition. — This fallacy consists in urging, in the character of a bar, or conclusive objection against the proposed measure, some consideration which, if presented in the character of a proposed amendment, might have more or less claim to notice.

It generally consists of some real or imaginary inconvenience, alleged commonly, but not necessarily, as eventually to result from the adoption of the measure.

This inconvenience, supposing it real, will either be preponderant over the promised benefit, or not preponderant.

In either case, it will be either remediable or irremediable.

If at the same time irremediable and preponderant, then it is, and then only, that in the character of an objection it is of itself conclusive.

By him in whose mind discernment and candour are combined, this distinction will be not only felt, but brought to view. If in respect of adequate discernment there be a failure, it will not be felt: if in respect of candour only, it will have been felt, but it will not be brought to view.

The occasion by which opportunity is afforded for the working of this fallacy, is the creation of any new office, including the mass of emolument which, without inquiry into the necessity, or any means taken for keeping down the quantum of it within the narrowed limits which the good of the service admits of, is, by the union of habit with the sinister interest that gave birth to it, annexed as of course, upon their creation, to all new offices.

The fallacy,—what there is of fallacy in the case, consists in the practice of setting up the two universally applicable objections, viz. *need of economy*, and mischief or danger from the increase of the *influence of the crown*, in the character of peremptory bars to the proposed measure.

Exposure. — The ground on which an objection of this stamp may with propriety be considered and spoken of under the denomination of a fallacy, is where the utility of the proposed new establishment is left unimpeached, and the sole reason for the rejection proposed to be put upon the proposed measure, consists in the above topics, or one of them.

In such case, on the part of him by whom any objections so inconclusive in their nature are relied on, the reliance placed on them amounts to a virtual acknowledgment of the utility of the proposed new establishment: inasmuch as in an address from one rational being to another, nothing seems, upon the face of the statement at least, more unnatural, than that if a man could find any objection that would apply to the particular establishment in question, in contradistinction to all others, he should confine himself to an objection which applies alike to almost all existing establishments; that is, to almost the whole frame of the existing government.

Such is the case where the two commonplace objections in question, or either of them, are brought out in the character of objections by themselves, and without being accompanied by any specific ones.

But even when added to specific ones, an objection thus inconclusive in its nature, if urged in a direct way, and dwelt upon with any emphasis, can scarcely — at least while there remain any useless places unabolished, or any overpaid places, from which the overplus of emolument remains undefalcated—be exempted from the imputation of irrelevancy.

At any rate, wherever it happens that a minister at present in office sees opposite to him in the House another person who has at any time been in office, it seems an observation not very easy to answer in the character of an argument *ad hominem*, should it be said, "When you were in office, there were such and such offices which were of no manner of use; these you never used your endeavours to abolish, notwithstanding the use that would have resulted from the abolition, in the shape of diminution of needless expenditure and sinister influence: yet now, when a set of offices is proposed, for which you cannot deny but that there is *some* use, your exertions for the benefit of economy are reserved to be directed against these useful ones."

No doubt but that, on the supposition that the two opposite masses of advantage and disadvantage being completely in equilibrio, —advantage in the shape of service expected to be rendered in the proposed new offices on the one hand, disadvantage in the shape of expense — of the emolument proposed to be attached to them on the other, — a weight much less than that of the mischief from the increase of sinister influence, would suffice to turn the scale.

Take also another supposition. Suppose (what is not in every case possible) that the value of the service expected to be obtained by means of the proposed new offices is capable of being obtained, and has accordingly been obtained in figures. Suppose, on the other hand (what will very frequently be feasible,) that the expense of the establishment may with sufficient precision be obtained in figures — and being so obtained, on striking the balance, found to be less than the advantage so expected from the service. Suppose, lastly (what is impossible,) that the value of the mischief which, in the shape of introduction of additional influence, were with sufficient precision capable of standing expressed in figures, had been so expressed—and being so expressed, the quantity of mischief in this shape were found sufficient to turn the scale on the side of disadvantage.

Here would be a sufficient reason for the rejection of the proposed establishment, and thence a sufficient warrant for bringing into the field the argument in question, commonplace as it is. But in regard to this last supposition, at any rate, how far it is from being capable of being realized, is but too evident.

Upon the whole, therefore, so far at least as concerns the objection drawn from the increase that would result to the sinister influence of the crown, it may be said, that whatsoever time is spent in descanting upon this topic, may be set down to the account of lost time.

It is a topic, the importance of which is surely sufficient to entitle it to be considered by itself. The influence of the crown, it ought always to be remembered, can no otherwise receive with propriety the epithet sinister, than in so far as, by being directed to and reaching a member of parliament or a parliamentary elector, it affects the purity of parliament. But by a system of measures properly directed to that end, the constitution of parliament might be effectually guarded against any degree of impurity capable of being productive of any sensible inconvenience, whatsoever were the lucrativeness of the utmost number of offices, for the creation or preservation of which so much as a plausible reason could be found: and were it otherwise, the proper remedy would be found, not in the refusal to create any new office, the service of which was understood to overbalance in any determinate and unquestionable degree the mischief of the expense, but in the taking the nomination out of the hands of the crown, and vesting it in some other and independent hands.

The putting all places in these respects upon the same footing, — necessary and unnecessary ones — properly paid and overpaid ones, — wears out and weakens that energy which should be reserved for, and directed with all its force against, unnecessary places, and the overplus part of the pay of overpaid ones.

Another occasion on which this fallacy is often wont to be applied, is the case in which, from the mere observation of a profit as likely from any transaction to accrue to this or that individual, a censure is grounded, pronouncing it a *job*.

The error in case of sincerity, the fallacy in case of insincerity, consists, in forgetting that individuals are the stuff of which the public is made; that there is no way of benefiting the public but by benefiting individuals; and that a benefit which, in the shape of pleasure or exemption from pain, does not sooner or later come home to the bosom of at least some one individual, is not in reality a benefit — is not entitled to that name.

So far then from constituting an argument in disfavour of the proposed measure, every benefit that can be pointed out as accruing, or likely to accrue, to any determinate individual or individuals, constitutes, as far as it goes, an argument in favour of the measure.

In no case whatsoever — on no imaginable supposition — can this consideration serve with propriety in the character of an argument in disfavour of any measure. In no case whatsoever — on no imaginable supposition — can it, so far as it goes, fail of serving with propriety in the character of an argument in favour of the measure. Is the measure good? — it adds to the mass of its advantages. Is the measure upon the whole a bad one? — it subtracts, by the whole amount of it, from the real amount of the disadvantages attached to the measure.

At the same time, in practice, there is no argument, perhaps, which is more frequently employed, or on which more stress is laid, without doors at any rate, if not within doors, than this, in the character of an argument in disfavour of a proposed measure — no argument which, even when taken by itself, is with more confidence relied on in the character of a conclusive one.

To what cause is so general a perversion of the faculty of reason to be ascribed?

Two causes present themselves as acting in this character: —

1. It is apt to be received (and that certainly not without reason) in the character of evidence — conclusive evidence — of the nature of the motive, to the influence of which the part taken by the supporters of the measure, or some of them (viz. all who in any way are partakers of the private benefit in question,) ought to be ascribed.

In this character, to the justness of the conclusion thus drawn, there can in general be nothing to object.

But the consideration of the motive in which the part taken, either by the supporters or the opposers of a measure, finds its cause, has elsewhere been shown to be a consideration altogether irrelevant;* and the use of the argument has been shown to be of the number of those fallacies, the influence of which is in its natural and general tendency unfavourable to every good cause.

The other cause is, the prevalence of the passion of envy. To the man to whom it is an object of envy, the good of another man is evil to himself. By the envy of the speaker or writer, the supposed advantage to the third person is denounced in the character of an evil, to the envy of the hearers or the readers: — denounced, and perhaps without any perception of the mistake, so rare is the habit of self-examination, and so gross and so perpetual the errors into which, for want of it, the human mind is capable of being led.

In speaking of the passion or affection of *envy*, as being productive of this fallacious argument, and of the error but for which shame would frequently restrain a man from the employment of it, — it is not meant to speak of this passion or this affection as one of which, on the occasion in question, the influence ought to be considered as pernicious on the whole.

So far from being pernicious, the more thoroughly it is considered, the more closely it will be seen to be salutary upon the whole; and not merely salutary, at least in the best

* See Part II. Chap. I. *Personalities*.

state of things that has yet been realized, but so necessary, that without it, society would hardly have been kept together.

The legislator who resolves not to accept assistance from any but social motives — from none, save what in his vocabulary pass under the denomination of pure motives, will find his laws without vigour and without use.

The judge who resolves to have no prosecutors who are brought to him by any but pure motives, will not find that part of his emolument which, under the present system of abuse, is composed of fees, and may save himself the trouble of going into court — of sitting on penal causes. The judge who should determine to receive no evidence but what was at the same time brought to him, and, when before him, guided by pure motives, need scarcely trouble himself to hear evidence.

The practical inference is — that, if he would avoid drawing down disgrace upon himself instead of upon the measure he is opposing, a man ought to abstain from employing this argument in confutation of the fallacy; since, in as far as he employs it, he is employing in refutation of one fallacy (and that so gross an one, that the bare mention of it in that character may naturally be sufficient to reduce the employer to silence,) — he is employing another fallacy, which is of itself susceptible of a refutation no less easy and conclusive.

It is only by the interests, the affections the passions — (all these words mean nothing more than the same psychological object appearing in different characters) — that the legislator, labouring for the good and in the service of mankind, can effect his purposes. Those interests, acting in the character of motives, may be of the self-regarding class, the dissocial, or the social: — the social he will, on every occasion where he finds them already in action, endeavour not only to engage in his service, but cherish and cultivate: the self-regarding and the dissocial, though his study will be rather to restrain than encourage them, he will at any rate, wherever he sees them in action or likely to come into action, use his best endeavours to avail himself of directing their influence, with whatever force he can muster, to his own social purposes.

PART V.

CHAPTER I.

CHARACTERS COMMON TO ALL THESE FALLACIES.

UPON the whole, the following are the characters which appertain in common to all the several arguments here distinguished by the name of fallacies: —

1. Whatsoever be the measure in hand, they are, with relation to it, irrelevant.

2. They are all of them such, that the application of these irrelevant arguments affords a presumption either of the weakness or total absence of relevant arguments on the side on which they are employed.

3. To any good purpose they are all of them unnecessary.

4. They are all of them not only capable of being applied, but actually in the habit of being applied, and with advantage, to bad purposes; viz. to the obstruction and defeat of all such measures as have for their object and their tendency, the removal of the abuses or other imperfections still discernible in the frame and practice of the government.

5. By means of their irrelevancy, they all of them consume and misapply time, thereby obstructing the course, and retarding the progress of all necessary and useful business.

6. By that irritative quality which, in virtue of their irrelevancy, with the improbity or weakness of which it is indicative, they possess, all of them, in a degree more or less considerable, but, in a more particular degree such of them as consist in personalities, they are productive of ill-humour, which in some instances has been productive of bloodshed, and is continually productive, as above, of waste of time and hindrance of business.

7. On the part of those who, whether in spoken or written discourses, give utterance to them, they are indicative either of improbity or intellectual weakness, or of a contempt for the understandings of those on whose minds they are destined to operate.

8. On the part of those on whom they operate, they are indicative of intellectual weakness: and on the part of those in and by whom they are pretended to operate, they are indicative of improbity; viz. in the shape of insincerity.

The practical conclusion is, that in proportion as the acceptance, and thence the utterance of them, can be prevented, the understanding of the public will be strengthened, the morals of the public will be purified, and the practice of government improved.

CHAPTER II.

OF THE MISCHIEF PRODUCIBLE BY FALLACIES.

THE first division that presents itself in relation to the mischief of a fallacy, may be expressed by the words specific and general.

The specific mischief of a fallacy consists in the tendency which it has to prevent or obstruct the introduction of this or that useful measure in particular.

The general mischief consists in that moral or intellectual depravation which produces habits of false reasoning and insincerity: — this mischief may again be distinguished into mischief produced *within doors* and mischief produced *withoutl doors*.

Under the appellation of mischief within doors, is to be understood all that mischief, that deception, which has its seat in the bosom of any member of the supreme legislative body.

Under the appellation of mischief without doors, all that which has its seat in the bosom of any person not included in that body — of any person whose station is among the people at large: —

CHAPTER III.

CAUSES OF THE UTTERANCE OF THESE FALLACIES.

THE causes of the utterance of these fallacies may, it should seem, be thus denominated and enumerated: —

1. Sinister interest — self-conscious sinister interest.
2. Interest-begotten prejudice.
3. Authority-begotten prejudice.
4. Self-defence, *i. e.* sense of the need of self-defence against counter-fallacies.

First cause, — *Sinister Interest, of the operation of which the party affected by it is conscious.*

The mind of every public man is subject at all times to the operation of two distinct interests — a public and a private one. His public interest is that which is constituted of the share he has in the happiness and well-being of the whole community, or of the major part of it: his private interest is constituted of, or by, the share he has in the well-being of some portion of the community less than the major part; of which private interest, the smallest possible portion is that which is composed of his own individual — his own personal — interest.

In the greater number of instances, these two interests are not only distinct, but opposite: and that to such a degree, that if either be exclusively pursued, the other must be sacrificed to it.

Take, for example, pecuniary interest. It is the personal interest of every public man at whose disposal public money extracted by taxes from the whole community is placed, that as large a share as possible, and if possible the whole of it, should remain there for his own use: it is at the same time the interest of the public, including his own portion of the public interest, that as small a share as possible, and if possible no part at all, remain in these same hands for his personal or any other private use.

Taking the whole of life together, there exists not, nor ever can exist, that human being in whose instance any public interest he can have had, will not, in so far as depends upon himself, have been sacrificed to his own personal interest. Towards the advancement of the public interest, all that the most public-spirited, which is as much as to say the most virtuous of men, can do, is to do what depends upon himself towards bringing the public interest — that is, his own personal share in the public interest, to a state as nearly approaching to coincidence, and on as few occasions amounting to a state of repugnance, as possible with his private interests.

Were there ever so much reason for regretting it, the sort of relation which is thus seen to have place between public and private interest would not be the less true: nor would it be the less incumbent on the legislator — nor would the legislator, in so far as he finds it reconcilable to his personal interest to pursue the public interest, be the less disposed and determined — to act and shape his measures accordingly.

But the more correct and complete a man's conception of the subject is, the more clearly will he understand, that in this natural and general predominance of personal over every more extensive interest, there is no just cause for regret. Why? Because upon this predominance depends the existence of the species, and the existence of every individual belonging to it. Suppose for a moment the opposite state of things — a state in which every one should prefer the public to himself: and the consequences — the necessary consequences, would be no less ridiculous in idea, than disastrous and destructive in reality.

In the ordinary course and strain of legislation, no supposition inconsistent with this only true and rational one is acted upon. On this supposition is built whatsoever is done in the application made either of the matter of reward, or of the matter of punishment, to the purposes of government. The supposition is — that on the part of every individual whose conduct it is thus endeavoured to shape and regulate, interest, and that private interest, will be the cause by the operation of which his conduct will be determined: not only so, but that in case of competition as

between such public and such private interest, it is the private interest that will predominate.

If the contrary supposition were acted upon, what would be the consequence? That neither in the shape of reward, nor in the shape of eventual punishment, would the precious matter of good and evil be wasted or exposed to waste, but (in lieu of requisition, with reward or punishment, or both, for its sanction, for securing compliance) advice and recommendation would be employed throughout the system of law, penal as well as remuneratory.

Thence it is, that in so far as in the instance of any class of men the state of the law is such as to make it the interest of men belonging to that body to give rise or continuance to any system of abuse however flagrant, a prediction that may be made with full assurance is, that the conduct of that body — that is, of its several members with few or no exceptions — will be such as to give rise or continuance to that system of abuse: and if there be any means which have been found to be, or promise to be, conducive to any such end, such means will accordingly, how inconsistent soever with probity in any shape, and in particular in the shape of sincerity, be employed.

A common bond of connexion, says Cicero somewhere, has place among all the virtues. To the word *virtue*, substitute the word *abuse*, meaning abuse in government, and the observation will be no less true. Among abuses in government, besides the logical *commune vinculum* composed of the common denomination *abuse*, there exists a moral *commune vinculum* composed of the particular and sinister interest in which all men who are members of a government so circumstanced have a share.

So long, then, as any man has any the smallest particle of this sinister interest belonging to him — so long has he an interest, and consequently a fellow-feeling with every other man who in the same situation has an interest of the like kind. Attack one of them, you attack all; and in proportion as each of them feels his share in this common concern dear to him, and finds himself in a condition to defend it, he is prepared to defend every other confederate's share with no less alacrity than if it were his own. But it is one of the characteristics of abuse, that it can only be defended by fallacy. It is therefore the interest of all the confederates of abuse to give the most extensive currency to fallacies, — not only to such as may be serviceable to each individual, but also to such as may be generally useful. It is of the utmost importance to them to keep the human mind in such a state of imbecility, as shall render it incapable of distinguishing truth from error.

Abuses — that is to say, institutions beneficial to the few at the expense of the many — cannot openly, directly, and in their own character, be defended: if at all, it must be in company with, and under the cover of other institutions, to which this character either does not in fact appertain, or is not seen to appertain.

For the few who are in possession of power, the principle the best adapted, if it were capable of being set to work, would be that which should be applicable to the purpose of giving to the stock of abuses established at each given period, an unlimited increase.

No longer than about a century ago, a principle of this cast actually was in force, and that to an extent that threatened the whole frame of society with ruin; viz. under the name of the principle of *passive obedience* and *non-resistance*.

This principle was a *primum mobile*, by the due application of which, abuses in all shapes might be manufactured for use, to an amount absolutely unlimited.

But this principle has now nearly, if not altogether, lost its force. The creation of abuses has therefore of necessity been given up; the preservation of them is all that remains feasible: it is to this work that all exertions in favour of abuse have for a considerable time past, and must henceforward be confined.

Institutions — some good, some bad — some favourable to both the few and the many — some favourable to the few alone, and at the expense of the many — are the ingredients of which the existing system is composed. He who protects all together, and without discrimination, protects the bad. To this object the exertions of industry are still capable of being directed with a prospect of success: and to this object they actually do continue to be directed, and with a degree of success disgraceful to the probity of the few by whom such breach of trust is practised, and to the intellect of the many by whom it is endured.

If the fundamental principle of all good government — viz. that which states as being on every occasion the proper, and the only proper end in view and object of pursuit, the greatest happiness of the greatest number — were on every occasion set up as the mark; on each occasion the particular question would be, by what particular means can this general object be pursued with the greatest probability of success?

But by the habit of recurring to and making application of this one principle, the eye of the inquirer, the tongue of the speaker, and the pen of the writer, would, on every part of the field of legislation, be brought to some conclusion — passing condemnation on some or other of those abuses, the continuance of

which has this common interest for its support.

In a word, so long as any one of these relatively profitable abuses continues unremedied, — so long must there be one such person, or more, to whose interest the use of reason is prejudicial, and to whom not only the particular beneficial measure from which that particular abuse would receive its correction, but every other beneficial measure, in so far as it is supported by reason, will also be prejudicial in the same way.

It is under the past and still existing state of things — in other words, under the dominion of usage, custom, precedent, acting without any such recurrence to this only true principle — that the abuses in question have sprung up. Custom, therefore, blind custom, in contradiction and opposition to reason, is the standard which he will on every occasion endeavour to set up as the only proper, safe, and definable standard of reference. Whatever is, is right: everything is as it should be. These are his favourite maxims — maxims which he will let slip no opportunity of inculcating to the best advantage possible.

Having, besides his share in the sinister interest, his share in the universal and legitimate interest, there must, to a corresponding extent, be laws and institutions, which, although good and beneficial, are no less beneficial to and necessary to his interest, than to that of the whole community of which he makes a part. Of these, then, in so far as they are necessary to his interest, he will be as sincere and strenuous a defender, as of those by which any part of the abuses which are subservient to his sinister interest is maintained.

It is conducive, for instance, to his interest, that the country should be effectually defended against the assault of the common enemy; that the persons and properties of the members of the community in general, his own included, should be as effectually as possible protected against the assaults of internal enemies — of common malefactors.

But it is under the dominion of custom — blind, or at best purblind custom — that such protection has been provided. Custom, therefore, being sufficient for his purpose — reason always adverse to it — custom is the ground on which it will be his endeavour to place every institution, the good as well as the bad. Referred to general utility as their standard, shown to be conformable to it by the application of reason to the case, they would be established and supported, indeed, on firmer ground than at present. But by placing them on the ground of utility, by the application of reason he has nothing to gain, while, as hath been seen above, he has every thing to lose and fear from it.

The principle of general utility, he will accordingly be disposed to represent in the character of "*a dangerous principle:*" for so long as blind custom continues to serve his purpose, such, with reference to him and his sinister interest, the principle of general utility really is.

Against the recognition of the principle of general utility, and the habit of employing reason as an instrument for the application of it, the leading members of the government, in so far as corruption has pervaded the frame of government, and in particular the members of all ranks of the profession of the law, have the same interest as in the eyes of Protestants and other non-catholics, the Pope and his subordinates had at the time and on the occasion of the change known in England by the name of the *Reformation*.

At the time of the Reformation, the opposition to general utility and human reason was conducted by fire and sword. At present, the war against these powers cannot be completely carried on by the same engines.

Fallacies, therefore, applied principally to the purpose of devoting to contempt and hatred those who apply the principle of general utility on this ground, remain the only instruments in universal use and request for defending the strongholds of abuse against hostile powers.

These engines we accordingly see applied to this purpose in prodigious variety, and with more or less artifice and reserve.

CHAPTER IV.

SECOND CAUSE — INTEREST BEGOTTEN-PREJUDICE.

IF by interest in some shape or other — that is, by a motive of some sort or other — every act of the will, and thence every act of the hand, is produced, so, directly or indirectly, must every act of the intellectual faculty: though in this case the influence of the interest, of this or that motive, is neither so perceptible, nor in itself so direct as in the other.

But how (it may be asked) is it possible that the motive a man is actuated by can be secret to himself? Nothing is more easy — nothing more frequent: indeed the rare case is, not that of his not knowing, but that of his knowing it.

It is with the anatomy of the human mind as with the anatomy and physiology of the human body: the rare case is, not that of a man's being unconversant, but that of his being conversant with it.

The physiology of the body is not without its difficulties: but in comparison of those by which the knowledge of the physiology of the mind has been obstructed, the difficulties are slight indeed.

Not unfrequently, as between two persons

living together in a state of intimacy, either or each may possess a more correct and complete view of the motives by which the mind of the other, than of those by which his own mind, is governed.

Many a woman has in this way had a more correct and complete acquaintance with the internal causes by which the conduct of her husband has been determined, than he has had himself.

The cause of this is easily pointed out. — By interest, a man is continually prompted to make himself as correctly and completely acquainted as possible with the springs of action by which the minds of those are determined, on whom he is more or less dependent for the comfort of his life.

But by interest, he is at the same time diverted from any close examination into the springs by which his own conduct is determined.

From such knowledge he has not, in any ordinary shape, anything to gain, — he finds not in it any source of enjoyment.

In any such knowledge he would be more likely to find mortification than satisfaction. The purely social motives, the semi-social motives, and, in the case of the dissocial motives, such of them as have their source in an impulse given by the purely social or by the semi-social motives,*—these are the motives, the prevalence of which he finds mentioned as matter of praise in the instance of other men: it is by the supposed prevalence of these amiable motives, that he finds reputation raised, and that respect and good-will in which every man is obliged to look for so large a portion of the comfort of his life.

In these same amiable and desirable endowments he finds the minds of other men actually abounding and overflowing: abounding during their lifetime by the testimony of their friends, and after their departure by the recorded testimony enregistered in some monthly magazine, with the acclamation of their friends, and with scarce a dissenting voice from among their enemies.

But the more closely he looks into the mechanism of his own mind, the less of the mass of effects produced he finds referable to any of those amiable and delightful causes; he finds nothing, therefore, to attract him towards this study — he finds much to repel him from it.

Praise and self-satisfaction on the score of moral worth, being accordingly hopeless, it is in intellectual that he will seek for it. "All men who are actuated by regard for anything but self, are fools; those only whose regard is confined to self, are wise. I am of the number of the wise."

Perhaps he is a man with whom a large proportion of the self-regarding motives may be mixed up with a slight tincture of the social motives operating upon the private scale. What in this case will he do? In investigating the source of a given action, he will in the first instance set it down, the whole of it, to the account of the amiable and conciliatory — in a word, the social motives. This, in the study of his own mental physiology, will always be his first step, and this will commonly be his last. Why should he look further? — why take in hand the probe?—why undeceive himself, and substitute a whole truth that would mortify him, for a half truth that flatters him?

The greater the share which the motives of the social class have in the production of the general tenour of a man's conduct, the less irksome, it seems evident, this sort of psychological self-anatomy will be. The first view is pleasing; and the more virtuous the man, the more pleasing is that study which to every man has been pronounced the proper one.

But the less irksome any pursuit is, the greater, if the state of faculties, intellectual and active, permit, will be a man's progress in it.

CHAPTER V.

THIRD CAUSE — AUTHORITY-BEGOTTEN PREJUDICE.

PREJUDICE is the name given to an opinion of any sort, on any subject, when considered as having been embraced without sufficient examination: it is a judgment, which being pronounced *before* evidence, is therefore pronounced without evidence.

Now, at the hazard of being deceived, and by deception led into a line of conduct prejudicial either to himself or to some one to whom it would rather be his wish to do service, what is it that could lead a man to embrace an opinion without sufficient examination?

One cause is, the uneasiness attendant on the labour of examination: he takes the opinion up as true, to save the labour that might be necessary to enable him to discern the falsity of it.

Of the propensity to take not only facts but opinions upon trust, the universality is matter of universal observation. Pernicious as it is in some of its applications, it has its root in necessity, in the weakness of the human mind. In the instance of each individual, the quantity of opinion which it is possible for him to give acceptance or rejection to, on the ground of examination performed by himself, bears but a small proportion to that in which such judgment as he passes upon it

* See *Introduction to Morals and Legislation* in Vol. I.

cannot have any firmer or other ground than that which is composed of the like judgment pronounced by some other individual or aggregate of individuals: the cases in which it is possible for his opinion to be *home-made*, bear but a small proportion to the cases in which, if any opinion at all be entertained by him, that opinion must necessarily have been imported.

But in the case of the public man, this necessity forms no justification either for the utterance or for the acceptance of such arguments of base alloy, as those which are represented under the name of fallacies.

These fallacies are not less the offspring of sinister interest, because the force of authority is more or less concerned. Where authority has a share in the production of them, there are two distinguishable ways in which sinister interest may also have its share.

A fallacy which, in the mouth of A, had its root immediately in interest — in self-conscious sinister interest — receiving utterance from his pen or his lips, obtains, upon the credit of his authority, credence among acceptors in any multitude. Having thus rooted itself in the minds of men, it becomes constitutive of a mass of authority, under favour of which, such fallacies as appear conducive to the planting or rooting in the minds of men in general, the erroneous notion in question, obtain, at the hands of other men, utterance and acceptance.

2. Having received the prejudice at the hands of authority — viz. of the opinion of those whose adherence to it was produced immediately or mediately by the operation of sinister interest, — sinister interest operating on the mind of the utterer or acceptor of the fallacy in question, prompts him to bestow on it, in the character of a rational argument, a degree of attention exceeding that which could otherwise have been bestowed on it; he fixes, accordingly, his attention on all considerations, the tendency of which is to procure for it utterance or acceptance, and keeps at a distance all considerations by which the contrary tendency is threatened.

CHAPTER VI.

FOURTH CAUSE — SELF-DEFENCE AGAINST COUNTER-FALLACIES.

THE opposers of a pernicious measure may be sometimes driven to employ fallacies, from their supposed utility as an answer to counter-fallacies.

"Such is the nature of men," they may say, "that these arguments, weak and inconclusive as they are, are those which on the bulk of the people (upon whom ultimately everything depends) make the strongest and most effectual impression: the measure is a most mischievous one; — it were a crime on our parts to leave unemployed any means not criminal, that promise to be contributory to its defeat. It is the weakness of the public mind, not the weakness of our cause, that compels us to employ such engines in the defence of it."

This defence might indeed be satisfactory, where the fallacies in question are employed — not as *substitutes*, but only as *supplements* to relevant and direct arguments.

But if employed as supplements, to prove their being employed in that character, and in that character only, and that the use thus made of them is not inconsistent with sincerity, two conditions seem requisite: —

1. That arguments of the direct and relevant kind be placed in the front of the battle, declared to be the main arguments, the arguments and considerations by which the opposition or support to the proposed measure was produced;

2. That on the occasion of employing the fallacies in question, an acknowledgment should be made of their true character, of their intrinsic weakness, and of the considerations which, as above, seemed to impose on the individual in question the obligation of employing them, and of the regret with which the consciousness of such an obligation was accompanied.

If, even when employed in opposition to a measure really pernicious, these warnings are omitted to be annexed to them, the omission affords but too strong a presumption of general insincerity. On the occasion in question, a man would have nothing to fear from any avowal made of their true character. Yet he omits to make this avowal. Why? Because he foresees that, on some other occasion or occasions, arguments of this class will constitute his sole reliance.

The more closely the above considerations are adverted to, the stronger is the proof which the use of such arguments, without such warnings, will be seen to afford of improbity or imbecility, or a mixture of the two, on the part of him by whom they are employed: of imbecility of mind, if the weakness of such arguments has really failed of becoming visible to him; of improbity, if, conscious of their weakness, and of their tendency to debilitate and pervert the faculties, intellectual and moral, of such persons as are swayed by them, he gives currency to them unaccompanied by such warning.

Is it of the one or of the other species of imperfection, or of a mixture of both, that such deceptious argumentation is evidentiary? On this occasion, as on others, the answer is not easy; nor, fortunately, is it material to estimate the connexion between these two divisions of the mental frame: so constantly and so materially does each of them exert an

influence on the other, that it is difficult for either to suffer, but the other must suffer more or less along with it. On many a well-meaning man this base and spurious metal has no doubt passed for sterling; but if you see it burnished, and held up in triumph by the hands of a man of strong as well as brilliant talents — by a very Master of the Mint—set him down, without fear of injuring him, upon the list of those who deceive, without having any such excuse to plead as that of having been deceived.

CHAPTER VII.

USE OF THESE FALLACIES TO THE UTTERERS AND ACCEPTORS OF THEM.

BEING all of them to such a degree replete with absurdity — many of them upon the face of them composed of nothing else — a question that naturally presents itself is, how it has happened that they have acquired so extensive a currency? — how it is that so much use has been made, and continues to be made, of them?

Is it credible (it may be asked,) that, to those by whom they are employed, the inanity and absurdity of them should not be fully manifest?—is it credible, that on such grounds political measures should proceed?

No, it is not credible: to the very person by whom the fallacy is presented in the character of a reason — of a reason on the consideration of which his opinion has been formed, and on the strength of which his conduct is grounded — it has presented itself in its genuine colours.

But in all assemblies in which shares in power are exercised by votes, there are two descriptions of persons whose convenience requires to be consulted — the speakers and the hearers.

To the convenience of persons in both these situations, the class of arguments here in question are in an eminent degree favourable: —

As to the situation of the speaker: — the more numerous and efficient the titles to respect which his argument enables him to produce, the more convenient and agreeable is that situation made to him. Probity in the shape of independence — superiority in the article of wisdom — superiority in the scale of rank: of all these qualities, the reputation is matter of convenience to a man; and of all these qualities, the reputation is by these arguments promised to be made secure.

1. As to independence: — when a man stands up to speak for the purpose of reconciling men to the vote he purposes to give, or for the purpose of giving to the side which he espouses whatsoever weight is regarded by him as attached to his authority, — the nature of the purpose imposes on him a sort of necessity of finding something in the shape of a reason to accompany and recommend it. Though in fact directed and governed by some other will behind the curtain, and by the interest by which that other will is governed, decency is understood to require, that it is from his own understanding, not from the will of any other person, that his own will should be understood to have received its direction.

But it is not by the matter of *punishment* or the matter of *reward* — it is not by *fears* or *hopes* — it is not by *threats* or *promises* — it is by something of the nature, or in the shape at least of a reason, that *understanding* is governed and determined. To show, then, that it is by the determination of his own judgment that his conduct is determined, it is deemed advisable to produce some observation or other in the character of the determinate reason, from which, on the occasion in question, his judgment, and thence his will, and active faculty, have received their direction.

The argument is accordingly produced, and by this exhibition the independent character of his mind is established by irrefragable evidence.

To this purpose, every article in the preceding catalogue may with more or less effect be made to serve, according to the nature of the case.

2. Next as to superiority in the scale of *wisdom*: — on running over the list, different articles will be seen to present in this respect different degrees of convenience.

Some of them will be seen scarcely putting in any special title to this praise.

In others, while the reputation of prudence is secured, yet it is that sort of prudence, which by the timidity attached to it is rendered somewhat the less acceptable to an erect and commanding mind.

To this class may be referred the arguments *ad metum* and *ad verecundiam*, — the hydrophobia of innovation, and argument of the ghost-seer, whose nervous system is kept in a state of constant agitation by the phantom of Jacobinism dancing before his eyes, — the idolator, who beholding in ancestry, in authority, in allegorical personages of various sorts and sizes, in precedents of all sorts, in great characters dead and living, placed in high situations, so many tyrants to whose will, real or supposed, blind obsequiousness at the hands of the vulgar of all classes, may by apt ceremonies and gesticulation be secured, makes himself the first prostration, in the hope and confidence of finding it followed by much and still more devout prostration, on the part of the crew of inferior idolators, in whose breasts the required obsequiousness has been implanted by long practice.

Other arguments, again, there are, in and for the delivery of which the wisdom of the orator places itself upon higher ground. His acuteness has penetrated to the very bottom

of the subject — his comprehension has embraced the whole mass of it — his adroitness has stripped the obnoxious proposal of the delusive colouring by which it had recommended itself to the eye of ignorance: he pronounces it speculative, theoretical, romantic, visionary: it may be good in theory, but it would be bad in practice: it is too good to be practicable: the goodness which glitters on the outside is sufficient proof, is evidence, and that conclusive, of the worthlessness that is within: its apparent facility suffices to prove it to be impracticable. The confidence of the tone in which the decision is conveyed, is at once the fruit and the sufficient evidence of the complete command which the glance of the moment sufficed to give him of the subject in all its bearings and dependencies. By the experience which his situation has led him to acquire, and the use which his judgment has enabled him to make of that experience, he catches up at a single glance those features which suffice to indicate the class to which the obnoxious proposal belongs.

3. By the same decision, delivered in the same tone, superiority of rank is not less strikingly displayed, than superiority of talent. It is no new observation how much the persuasion, or at least the expression given to it, is strengthened by the altitude of the rank as constituted or accompanied by the fullness of the purse.

The labour of the brain, no less than that of the hand, is a species of drudgery which the man of elevated station sees the propriety and facility of turning over to the base-born crowd below — to the set of plodders whom he condescends upon occasion to honour with his conversation and his countenance. By his rank and opulence he is enabled in this, as in other ways, to pick and choose what is most congenial to his taste. By the royal hand of Frederic, philosophers and oranges were subjected to the same treatment, and put to the same use. The sweets, the elaboration of which had been the work of years, were elicited in a few moments by the pressure of an expert hand.

The praise of the receiver of wisdom is always inferior to that of the utterer; but neither is the receiver, so he but make due profit of what he receives, without his praise.

The advantage he acquires from these arguments, is — that of being enabled to give the reason of the faith that is, or is supposed to be, in him.

In some circumstances, in which silence will not serve a man, it will, and to a certainty, be construed into a confession of self-convicting consciousness; — consciousness that what he does is wrong and indefensible, — that what he gives men to understand to be his opinion, is not really his opinion, — that of the supposed facts, which he has been asserting to form an apparent foundation for his supposed opinion, the existence is not true.

By a persuasion to any such effect, on the part of those with whom he has to do, his credit, his reputation, would be effectually destroyed.

Something, therefore, must be said, of which it may be supposed that, how little soever may be the weight properly belonging to it, it may have operated on his mind in the character of a reason. By this means his reputation for wisdom is all that is exposed to suffer; — his reputation for probity is saved.

Thus, in the case of this sort of base argument, as sometimes in the case of bad money, each man passes it off upon his neighbour, not as being unconscious of its worthlessness — not so much as expecting his neighbour to be really insensible of its worthlessness — but in the hope and expectation that the neighbour, though not insensible of its worthlessness, may yet not find himself altogether debarred from the supposition, that to the utterer of the base argument, the badness of it may possibly not have been clearly understood.

But the more generally current in the character of an argument any such absurd notion is, the greater is the apparent probability of its being really entertained: for there is no notion, actual or imaginable, that a man cannot be brought to entertain, if he be but satisfied of its being generally or extensively entertained by others.

CHAPTER VIII.

PARTICULAR DEMAND FOR FALLACIES UNDER THE ENGLISH CONSTITUTION.

Two considerations will suffice to render it apparent that, under the British Constitution, there cannot but exist, on the one hand, such a demand for fallacies — and, on the other hand, such a supply of them, as, for copiousness and variety taken together, cannot be to be matched elsewhere.

1. In the first place, a thing necessary to the existence of the demand is, discussion to a certain degree free.

Where there are no such institutions as a popular assembly taking an efficient part in the government, and publishing or suffering to be published accounts of its debates, — nor yet any free discussion through the medium of the press, — there is, consequently, no demand for fallacies. Fallacy is fraud, and fraud is useless when everything may be done by force.

The only case which can enter into comparison with the English government, is that of the Anglo-American United States.

There, on the side of the *outs*, the demand for fallacies stands, without any diffe-

rence worth noticing, on a footing similar to that on which it stands under the English constitution.

But the side of the *outs* is that side on which the demand for fallacies is by much the least urgent and abundant.

On the side of the *ins*, the demand for fallacies depends upon the aggregate mass of abuse: its magnitude and urgency depend upon the magnitude of that mass, and its variety upon the variety of the shapes in which abuse has manifested itself.

On crossing the water, fortune gave to British America, the relief that policy gave to the fox; of the vermin by which she had been tormented, a part were left behind.

No deaf auditors of the Exchequer, — no blind surveyors of melting irons, — no non-registering registrars of the Admiralty court, or of any other judicatory, — no tellers, by whom no money is told, but that which is received into their own pockets, — no judge acting as clerk under himself, — no judge pocketing £7000 a-year for useless work, for which men are forced to address his clerks, — no judge, who in the character of judge over himself sits in one place to protect, by storms of fallacy and fury, the extortions and oppressions habitually committed in another,— no tithe-gatherers exacting immense retribution for minute or never-rendered service.

With respect to the whole class of fallacies built upon authority, — precedent, wisdom of ancestors, dread of innovation, immutable laws, and many others, occasioned by ancient ignorance and ancient abuses — what readers soever there may be, by whom what is to be found under those several heads has been perused, to them it will readily occur, that in the American Congress the use made of these fallacies is not likely to be so copious as in that august assembly, which, as the only denomination it can with propriety be called by, has been pleased to give itself that of the Imperial Parliament of Great Britain and Ireland.

CHAPTER IX.

THE DEMAND FOR POLITICAL FALLACIES: — HOW CREATED BY THE STATE OF INTERESTS.

IN order to have a clear view of the object to which political fallacies will in the greatest number of instances be found to be directed, it will be necessary to advert to the state in which, with an exception comparatively inconsiderable, the business of government ever has been, and still continues to be, in every country upon earth; and for this purpose must here be brought to view a few positions, the proof of which, if they require any, would require too large a quantity of matter for this place — positions which, if not immediately assented to, will at any rate, even by those whom they find most adverse, be allowed to possess the highest claim to attention and examination:

1. The end or object in view, to which every political measure, whether established or proposed, ought according to the extent of it to be directed, is the greatest happiness of the greatest number of persons interested in it, and that for the greatest length of time.

2. Unless the United States of North America be virtually an exception, in every known state the happiness of the many has been at the absolute disposal either of the one or of the comparatively few.

3. In every human breast — rare and short-lived ebullitions, the result of some extraordinary strong stimulus or incitement excepted — self-regarding interest is predominant over social interest: each person's own individual interest, over the interests of all other persons taken together.

4. In the few instances, if any, in which, throughout the whole tenor or the general tenor of his life, a person sacrifices his own individual interest to that of any other person or persons, such person or persons will be a person or persons with whom he is connected by some domestic or other private and narrow tie of sympathy; not the whole number, or the majority of the whole number, of the individuals of which the political community to which he belongs is composed.

5. If in any political community there be any individuals by whom, for a constancy, the interests of all the other members put together are preferred to the interest composed of their own individual interest, and that of the few persons particularly connected with them, these public-spirited individuals will be so few, and at the same time so impossible to distinguish from the rest, that to every practical purpose they may, without any practical error, be laid out of the account.

6. In this general predominance of self-regarding over social interest, when attentively considered, there will not be found any just subject of regret, any more than of contestation; for it will be found, that but for this predominance, no such species as that which we belong to could have existence: and that, supposing it, if possible, done away, insomuch that all persons, or most persons, should find respectively, some one or more persons, whose interest was respectively, through the whole of life, dearer to them, and as such more anxiously and constantly watched over than their own, the whole species would necessarily, within a very short space of time, become extinct.

7. If this be true, it follows, by the unchangeable constitution of human nature, that in every political community, by the hands by

which the supreme power over all the other members of the community is shared, the interest of the many over whom the power is exercised, will on every occasion, in case of competition, be in act or in endeavour sacrificed to the particular interest of those by whom the power is exercised.

8. But every arrangement by which the interest of the many is sacrificed to that of the few, may with unquestionable propriety, if the above position be admitted, and to the extent of the sacrifice, be termed a bad arrangement; indeed, the only sort of bad arrangement— those excepted, by which the interest of both parties is sacrificed.

9. A bad arrangement, considered as already established and in existence, is, or may be termed, *an abuse.*

10. In so far as any competition is seen, or supposed to have place, the interests of the subject many being on every occasion, as above, in act or in endeavour constantly sacrificed by the ruling few to their own particular interests,—hence, with the ruling few, a constant object of study and endeavour is the preservation and extension of the mass of abuse: at any rate, such is the constant propensity.

11. In the mass of abuse, which, because it is so constantly their interest, it is constantly their endeavour to preserve, is included not only that portion from which they derive a direct and assignable profit, but also that portion from which they do not derive any such profit. For the mischievousness of that from which they do not derive any such direct and particular profit, cannot be exposed but by facts and observations, which, if pursued, would be found to apply also to that portion from which they do derive direct and particular profit. Thus it is, that in every community, all men in power —or, in one word, the *ins*— are, by self-regarding interest, constantly engaged in the maintenance of abuse in every shape in which they find it established.

12. But whatsoever the *ins* have in possession, the *outs* have in expectancy. Thus far, therefore, there is no distinction between the sinister interests of the *ins* and those of the *outs*, nor, consequently, in the fallacies by which they respectively employ their endeavours in the support of their respective sinister interests.

13. Thus far the interests of the outs coincide with the interest of the ins. But there are other points in which their interests are opposite. For procuring for themselves the situations and mass of advantages possessed by the ins, the outs have one, and but one, mode of proceeding. This is the raising their own place in the scale of political reputation, as compared with that of the ins. For effecting this ascendency, they have accordingly two correspondent modes: the raising their own, and the depreciating that of their successful rivals.

14. In addition to that particular and sinister interest which belongs to them in their quality of ruling members, these rivals have their share in the universal interest which belongs to them in their quality of members of the community at large. In this quality, they are sometimes occupied in such measures as in their eyes are necessary for the maintenance of the universal interest — for the preservation of that portion of the universal happiness of which their regard for their own interests does not seem to require the sacrifice: for the preservation, and also for the increase of it; for by every increase given to it they derive advantage to themselves, not only in that character which is common to them with all the other members of the community, but, in the shape of reputation, in that character of ruling members which is peculiar to themselves.

15. But in whatsoever shape the ins derive reputation to themselves, and thus raise themselves to a higher level in the scale of comparative reputation, it is the interest of the outs, as such, not only to prevent them from obtaining this rise, but if possible, and as far as possible, to cause their reputation to sink. Hence, on the part of the outs there exists a constant tendency to oppose all good arrangements proposed by the ins. But, generally speaking, the better an arrangement really is, the better it will generally be thought to be; and the better it is thought to be, the higher will the reputation of its supporters be raised by it. In so far, therefore, as it is in their power, the better a new arrangement proposed by the ins is, the stronger is the interest by which the outs are incited to oppose it. But the more obviously and indisputably good it is when considered in itself, the more incapable it is of being successfully opposed in the way of argument otherwise than by fallacies; and hence, in the aggregate mass of political fallacies, may be seen the character and general description of that portion of it which is employed chiefly by the outs.

16. In respect and to the extent of their share in the universal interest, an arrangement which is beneficial to that interest will be beneficial to themselves: and thus, supposing it successful, the opposition made by them to the arrangement would be prejudicial to themselves. On the supposition, therefore, of the success of such opposition, they would have to consider which in their eyes would be the greater advantage—their share in the advantage of the arrangement, or the advantage promised to them by the rise of their place in the comparative scale of reputation, by the elevation given to themselves, and the depression caused to their adversaries.

But, generally speaking, in a constitution such as the English in its present state, the chances are in a prodigious degree against the success of any opposition made by the outs to even the most flagrantly bad measure of the ins: much more, of course, to a really good one. Hence it is, that when the arrangement is in itself *good*, if with any prospect of success or advantage, any of the fallacies belonging to their side can be brought up against the arrangement, and this without prejudice to their own reputation, — they have nothing to stand in the way of the attempt.

17. In respect of those *bad* arrangements which by their sinister interest the ins stand engaged to promote, and in the promotion of which the outs have, as above, a community of interest, — the part dictated by their sinister interest is a curious and delicate one. By success, they would lessen that mass of sinister advantage which, being that of their antagonists in possession, is theirs in expectancy. They have, therefore, their option to make between this disadvantage and the advantage attached to a correspondent advance in the scale of comparative reputation. But, their situation securing to them little less than a certainty of failure, they are, therefore, as to this matter, pretty well at their ease. At the same time, seeing that whatsoever diminution from the mass of abuse they were to propose in the situation of outs, they could not, without loss of reputation, unless for some satisfactory reason, avoid bringing forward, or at least supporting, in the event of their changing places with the ins, — hence it is, that any such defalcation which they can in general prevail upon themselves to propose, will in general be either spurious and fallacious, or at best inadequate: — inadequate, — and by its inadequacy, and the virtual confession involved in it, giving support and confirmation to every portion of kindred abuse which it leaves untouched.

CHAPTER X.

DIFFERENT PARTS WHICH MAY BE BORNE IN RELATION TO FALLACIES.

As in the case of bad money, so in the case of bad arguments: in the sort and degree of currency which they experience, different persons acting so many different parts are distinguishable.

Fabricator, utterer, acceptor: these are the different parts acted in the currency given to a bad shilling: these are the parts acted on the occasion of the currency given to a bad argument.

In the case of a bad argument, he who is *fabricator* must be utterer likewise, or in general it would not make its appearance. But for one fabricator who is an utterer, there may be utterers in any number, no one of whom was fabricator.

In the case of the bad argument, as in the case of the bad shilling, in the instance of each actor, the mind is, with reference to the nature and tendency of the transaction, capable of bearing different aspects, which, for purposes of practical importance, it becomes material to distinguish:—

1. Evil consciousness (in the language of Roman lawyers, *dolus;* in the language of Roman, and thence of English lawyers, *mala fides:*) 2. Blameable ignorance or inattention, say, in one word, *Temerity*, (in the same language sometimes *culpa*, sometimes *temeritas:*) 3. Blameless agency, *actus;* which, notwithstanding any mischief that may have been the casual result of it, was free of blame:— by these several denominations are characterized so many habitudes, of which, with relation to any pernicious result, the mind is susceptible.

In the case of the argument, as in the case of the shilling, where the mind is in that state in which the charge of evil-consciousness may with propriety be made, that which the man is conscious of is, the badness of the article which he has in hand.

In general, it is in the case of the *fabricator* that the mind is least apt to be free from the imputation of evil-consciousness. Be it the bad shilling — be it the bad argument — the making of it will have cost more or less trouble; which trouble, generally speaking, the fabricator will not have taken but in the design of utterance, and in the expectation of making, by means of such utterance, some advantage. In the instance of the bad shilling, it is certain — in the instance of the bad argument, it is more or less probable (more probable in the case of the fabricator than in the case of the mere utterer) — that the badness of it was known and understood. It is certainly possible that the badness of the argument may never have been perceived by the fabricator, or that the bad argument may have been framed without any intention of applying it to bad purposes. But in general, the more a man is exposed to the action of sinister interest, the more reason there is for charging him with evil-consciousness, supposing him to be aware of the action of the sinister interest.

However the action of the sinister interest may have been either *perceived* or *unperceived* — for without a certain degree of attention, a man no more perceives what is passing in his own, than what is passing in other minds — the book that lies open before him, though it be the object nearest to him, and though he be ever so much in the habit of reading, may, even while two eyes are fixed upon it, be read or not read, according as it happens that circumstances have, or have not, called his attention to the contents.

The action of a sinister interest may have been *immediate* or *un-immediate*.

Immediate; it may have been perceived or not perceived: un-immediate; it has, almost to a certainty, been unperceived.

Sinister interest has two *media* through which it usually operates. These are *prejudice* and *authority*; and hence, we have for the immediate progeny of sinister interest, *interest-begotten* prejudice and *authority-begotten* prejudice.

In what case soever a bad argument has owed its fabrication or its utterance to sinister interest, and that interest is not, at the time of fabrication or utterance, perceived, it has for its immediate parent either *in-bred* prejudice or *authority*.

Of the three operations thus intimately connected — viz. *fabrication*, *utterance*, and *acceptance* — that the two first are capable of having *evil-consciousness* for their accompaniment, is obvious. As to acceptance, a distinction must be made before an answer can be given to the question, whether it is accompanied with evil-consciousness.

It may be distinguished into *interior* and *exterior*. Where the opinion, how false soever, is really believed to be true by the person to whom it has been presented, the acceptance given to it may be termed internal: where, whether by discourse, by deportment, or other tokens, a belief of its having experienced an internal acceptance at his hands is, with or without design on his part, entertained by other persons; in so far may it be said to have experienced at his hands an external acceptance.

In the natural state of things, both these modes of acceptance have place together: upon the *internal*, the *external* mode follows as a natural consequence. Either of them is, however, capable of having place without the other: feeling the force of an argument, I may appear as if I had not felt it; not having received any impression from it, I may appear as if I had received an impression of greater or less strength, whichever best suits my purpose.

It is sufficiently manifest, that evil-consciousness cannot be the accompaniment of internal acceptance; but it may be an accompaniment, and actually is the accompaniment of external acceptance, as often as the external has not for its accompaniment the internal acceptance.

Supposing the argument such that the appellation of fallacy is justly applicable to it, whatsoever part is borne in relation to it — viz. fabrication, utterance, or acceptance — may with propriety be ascribed to want of probity or want of intelligence.

Hitherto the distinction appears plain and broad enough; but upon a closer inspection, a sort of a mixed, or a middle state between that of evil-consciousness and that of pure temerity — between that of improbity and that of imbecility — may be observed.

This is where the persuasive force of the argument admits of different degrees — as when an argument, which operates with a certain degree of force on the utterer's mind, is, in the utterance given to it, represented as acting with a degree of force to any amount more considerable.

Thus, a man who considers his opinion as invested only with a certain degree of probability, may speak of it as of a matter of absolute certainty. The persuasion he thus expresses is not absolutely false, but it is exaggerated; and this exaggeration is a species of falsehood.

The more frequent the trumpeter of any fallacy is in its performance, the greater the progress which his mind is apt to make from the state of evil-consciousness to the state of temerity — from the state of improbity to the state of imbecility; that is, imbecility with respect to the subject-matter. It is said of gamblers, that they begin their career as dupes, and end as thieves: in the present case, the parties begin with craft, and end with delusion.

A phenomenon, the existence of which seems to be out of dispute, is that of a liar, by whom a lie of his own invention has so often been told as true, that at length it has come to be accepted as such even by himself.

But if such is the case with regard to a statement composed of words, every one of which finds itself in manifest contradiction to some determinate truth, it may be imagined how much more easily, and consequently how much more frequently, it may come to be the case, in regard to a statement of such nicety and delicacy, as that of the strength of the impression made by this or that instrument of persuasion, of which the persuasive force is susceptible of innumerable degrees, no one of which has ever yet been distinguished from any other, by any externally sensible signs or tokens, in the form of discourse or otherwise.

If substitution of irrelevant arguments to relevant ones is evidence of a bad cause, and of consciousness of the badness of that bad cause, much more is the substitution of application made to the *will*, to applications made to the *understanding*: — of the matter of punishment or reward, to the matter of argument.

Arguments addressed to the understanding may, if fallacious, be answered; and any mischief they had a tendency to produce, be prevented by counter-arguments addressed to the understanding.

Against arguments addressed to the will, those addressed to the understanding are altogether without effect, and the mischief produced by them is without remedy.

ANARCHICAL FALLACIES;

BEING

AN EXAMINATION

OF

THE DECLARATIONS OF RIGHTS

ISSUED DURING

THE FRENCH REVOLUTION.

BY

JEREMY BENTHAM.

ADVERTISEMENT.

The following papers are now first published in English, from Mr. Bentham's MSS.; the substance of them has previously been published in French by Dumont.

AN EXAMINATION OF THE DECLARATION

OF THE

RIGHTS OF THE MAN AND THE CITIZEN

DECREED BY THE

CONSTITUENT ASSEMBLY IN FRANCE.

PREAMBLE.

"THE Representatives of the French people, constituted in National Assembly, considering that ignorance, forgetfulness, or contempt of the Rights of Man, are the only causes of public calamities, and of the corruption of governments, have resolved to set forth in a solemn declaration, the natural, unalienable, and sacred rights of man, in order that this declaration, constantly presented to all the members of the body social, may recall to mind, without ceasing, their rights and their duties; to the end, that the acts of the legislative power, and those of the executive power, being capable at every instant of comparison with the end of every political institution, they may be more respected, and also that the demands of the citizens hereafter, founded upon simple and incontestable principles, may always tend to the maintenance of the constitution and to the happiness of all."

"In consequence, the National Assembly acknowledges and declares, in the presence and under the auspices of the Supreme Being, the following Rights of the Man and the Citizen."—

From this preamble we may collect the following positions: —

1. That the declaration in question ought to include a declaration of all the powers which it is designed should thereafter subsist in the State; the limits of each power precisely laid down, and every one completely distinguished from the other.

2. That the articles by which this is to be done, ought not to be loose and scattered, but closely connected into a whole, and the connexion all along made visible.

3. That the declaration of the rights of man, in a state preceding that of political society, ought to form a part of the composition in question, and constitute the first part of it.

4. That in point of fact, a clear idea of all these stands already imprinted in the minds of every man

5. That, therefore, the object of such a draught is not, in any part of such a draught, to teach the people anything new.

6. But that the object of such a declaration is to declare the accession of the Assembly, as such, to the principles as understood and embraced, as well by themselves in their individual capacity, as by all other individuals in the State.

7. That the use of this solemn adoption and recognition is, that the principles recognised may serve as a standard by which the propriety of the several particular laws that are afterwards to be enacted in consequence, may be tried.

8. That by the conformity of these laws to this standard, the fidelity of the legislators to their trust is also to be tried.

9. That accordingly, if any law should hereafter be enacted, between which, and any of those fundamental articles, any want of conformity in any point can be pointed out, such want of conformity will be a conclusive proof of two things: 1. Of the impropriety of such law; 2. Of error or criminality on the part of the authors and adopters of that law.

It concerns me to see so respectable an Assembly hold out expectations, which, according to my conception, cannot in the nature of things be fulfilled.

An enterprise of this sort, instead of preceding the formation of a complete body of laws, supposes such a work to be already existing in every particular except that of its obligatory force.

No laws are ever to receive the sanction of the Assembly that shall be contrary in any point to these principles. What does this suppose? It supposes the several articles of detail that require to be enacted, to have been drawn up, to have been passed in review, to have been confronted with these fundamental articles, and to have been found in no respect

repugnant to them. In a word, to be sufficiently assured that the several laws of detail will bear this trying comparison, one thing is necessary: the comparison must have been made.

To know the several laws which the exigencies of mankind call for, a view of all these several exigencies must be obtained. But to obtain this view, there is but one possible means, which is, to take a view of the laws that have already been framed, and of the exigencies which have given birth to them.

To frame a composition which shall in any tolerable degree answer this requisition, two endowments, it is evident, are absolutely necessary: — an acquaintance with the law as it is, and the perspicuity and genius of the metaphysician: and these endowments must unite in the same person.

I can conceive but four purposes which a discourse, of the kind proposed under the name of a Declaration of Rights, can be intended to answer:—the setting bounds to the authority of the crown; — the setting bounds to the authority of the supreme legislative power, that of the National Assembly; — the serving as a general guide or set of instructions to the National Assembly itself, in the task of executing their function in detail, by the establishment of particular laws; — and the affording a satisfaction to the people.

These four purposes seem, if I apprehend right, to be all of them avowed by the same or different advocates for this measure.

Of the fourth and last of these purposes I shall say nothing: it is a question merely local — dependent upon the humour of the spot and of the day, of which no one at a distance can be a judge. Of the fitness of the end, there can be but one opinion: the only question is about the fitness of the means.

In the three other points of view, the expediency of the measure is more than I can perceive.

The description of the persons, of whose rights it is to contain the declaration, is remarkable. Who are they? The French nation? No; not they only, but all citizens, and all men. By citizens, it seems we are to understand men engaged in political society: by men, persons not yet engaged in political society — persons as yet in a state of nature.

The word men, as opposed to citizens, I had rather not have seen. In this sense, a declaration of the rights of men is a declaration of the rights which human creatures, it is supposed, would possess, were they in a state in which the French nation certainly are not, nor perhaps any other; certainly no other into whose hands this declaration could ever come.

This instrument is the more worthy of attention, especially of the attention of a foreigner, inasmuch as the rights which it is to declare are the rights which it is supposed belong to the members of every nation in the globe. As a member of a nation which with relation to the French comes under the name of a foreign one, I feel the stronger call to examine this declaration, inasmuch as in this instrument I am invited to read a list of rights which belong as much to me as to the people for whose more particular use it has been framed.

The word men, I observe to be all along coupled in the language of the Assembly itself, with the word citizen. I lay it, therefore, out of the question, and consider the declaration in the same light in which it is viewed by M. Turgot, as that of a declaration of the rights of all men in a state of citizenship or political society.

I proceed, then, to consider it in the three points of view above announced: —

1. Can it be of use for the purpose of setting bounds to the power of the crown? No; for that is to be the particular object of the Constitutional Code itself, from which this preliminary part is detached in advance.

2. Can it be of use for the purpose of setting bounds to the power of the several legislative bodies established or to be established? I answer, No.

(1.) Not of any subordinate ones; for of their authority, the natural and necessary limit is that of the supreme legislature, the National Assembly.

(2.) Not of the National Assembly itself:— Why? 1. Such limitation is unnecessary. It is proposed, and very wisely and honestly, to call in the body of the people, and give it as much power and influence as in its nature it is capable of: by enabling it to declare its sentiments whenever it thinks proper, whether immediately, or through the channel of the subordinate assemblies. Is a law enacted or proposed in the National Assembly, which happens not to be agreeable to the body of the people? It will be equally censured by them, whether it be conceived, or not, to bear marks of a repugnancy to this declaration of rights. Is a law disagreeable to them? They will hardly think themselves precluded from expressing their disapprobation, by the circumstance of its not being to be convicted of repugnancy to that instrument; and though it should be repugnant to that instrument, they will see little need to resort to that instrument for the ground of their repugnancy; they will find a much nearer ground in some particular real or imaginary inconvenience.

In short, when you have made such provision, that the supreme legislature can never carry any point against the general and persevering opinion of the people, what would you have more? What use in their attempting to bind themselves by a set of phrases

of their own contrivance? The people's pleasure: that is the only check to which no other can add anything, and which no other can supersede.

In regard to the rights thus declared, mention will either be made of the exceptions and modifications that may be made to them by the laws themselves, or there will not. In the former case, the observance of the declaration will be impracticable; nor can the law in its details stir a step without flying in the face of it. In the other case, it fails thereby altogether of its only object, the setting limits to the exercise of the legislative power. Suppose a declaration to this effect:—no man's liberty shall be abridged in any point. This, it is evident, would be an useless extravagance, which must be contradicted by every law that came to be made. Suppose it to say—no man's liberty shall be abridged, but in such points as it shall be abridged in, by the law. This, we see, is saying nothing: it leaves the law just as free and unfettered as it found it.

Between these two rocks lies the only choice which an instrument destined to this purpose can have. Is an instrument of this sort produced? We shall see it striking against one or other of them in every line. The first is what the framers will most guard against, in proportion to their reach of thought, and to their knowledge in this line: when they hit against the other, it will be by accident and unawares.

Lastly, it cannot with any good effect answer the only remaining intention, viz. that of a check to restrain as well as to guide the legislature itself, in the penning of the laws of detail that are to follow.

The mistake has its source in the current logic, and in the want of attention to the distinction between what is first in the order of demonstration, and what is first in the order of invention. Principles, it is said, ought to precede consequences; and the first being established, the others will follow of course. What are the principles here meant? General propositions, and those of the widest extent. What by consequences? Particular propositions, included under those general ones.

That this order is favourable to demonstration, if by demonstration be meant personal debate and argumentation, is true enough. Why? Because, if you can once get a man to admit the general proposition, he cannot, without incurring the reproach of inconsistency, reject a particular proposition that is included in it.

But, that this order is not the order of conception, of investigation, of invention, is equally undeniable. In this order, particular propositions always precede general ones. The assent to the latter is preceded by and grounded on the assent to the former.

If we prove the consequences from the principle, it is only from the consequences that we learn the principle.

Apply this to laws. The first business, according to the plan I am combating, is to find and declare the principles: the laws of a fundamental nature: that done, it is by their means that we shall be enabled to find the proper laws of detail. I say, no: it is only in proportion as we have formed and compared with one another the laws of detail, that our fundamental laws will be exact and fit for service. Is a general proposition true? It is because all the particular propositions that are included under it are true. How, then, are we to satisfy ourselves of the truth of the general one? By having under our eye all the included particular ones. What, then, is the order of investigation by which true general propositions are formed? We take a number of less extensive — of particular propositions; find some points in which they agree, and from the observation of these points form a more extensive one, a general one, in which they are all included. In this way, we proceed upon sure grounds, and understand ourselves as we go: in the opposite way, we proceed at random, and danger attends every step.

No law is good which does not add more to the general mass of felicity than it takes from it. No law ought to be made that does not add more to the general mass of felicity than it takes from it. No law can be made that does not take something from liberty; those excepted which take away, in the whole or in part those laws which take from liberty. Propositions to the first effect I see are true without any exception: propositions to the latter effect I see are not true till after the particular propositions intimated by the exceptions are taken out of it. These propositions I have attained a full satisfaction of the truth of. How? By the habit I have been in for a course of years, of taking any law at pleasure, and observing that the particular proposition relative to that law was always conformable to the fact announced by the general one.

So in the other example. I discerned in the first instance, in a faint way, that two classes would serve to comprehend all laws: laws which take from liberty in their immediate operation, and laws which in the same way destroy, in part or in the whole, the operation of the former. The perception was at first obscure, owing to the difficulty of ascertaining what constituted in every case a law, and of tracing out its operation. By repeated trials, I came at last to be able to show of any law which offered itself, that it came under one or other of those classes.

What follows? That the proper order is —first to digest the laws of detail, and when

they are settled and found to be fit for use, then, and not till then, to select and frame *in terminis*, by abstraction, such propositions as may be capable of being given without self-contradiction as fundamental laws.

What is the source of this premature anxiety to establish fundamental laws? It is the old conceit of being wiser than all posterity — wiser than those who will have had more experience, — the old desire of ruling over posterity — the old recipe for enabling the dead to chain down the living. In the case of a specific law, the absurdity of such a notion is pretty well recognised, yet there the absurdity is much less than here. Of a particular law, the nature may be fully comprehended — the consequences foreseen: of a general law, this is the less likely to be the case, the greater the degree in which it possesses the quality of a general one. By a law of which you are fully master, and see clearly to the extent of, you will not attempt to bind succeeding legislators: the law you pitch upon in preference for this purpose, is one which you are unable to see to the end of.

Ought no such general propositions, then, to be ever framed till after the establishment of a complete code? I do not mean to assert this; on the contrary, in morals as in physics, nothing is to be done without them. The more they are framed and tried, the better: only, when framed, they ought to be well tried before they are ushered abroad into the world in the character of laws. In that character they ought not to be exhibited till after they have been confronted with all the particular laws to which the force of them is to apply. But if the intention be to chain down the legislator, these will be all the laws without exception which are looked upon as proper to be inserted in the code. For the interdiction meant to be put upon him is unlimited: he is never to establish any law which shall disagree with the pattern cut out for him — which shall ever trench upon such and such rights.

Such indigested and premature establishments betoken two things: — the weakness of the understanding, and the violence of the passions: the weakness of the understanding, in not seeing the insuperable incongruities which have been above stated — the violence of the passions, which betake themselves to such weapons for subduing opposition at any rate, and giving to the will of every man who embraces the proposition imported by the article in question, a weight beyond what is its just and intrinsic due. In vain would man seek to cover his weakness by positive and assuming language: the expression of one opinion, the expression of one will, is the utmost that any proposition can amount to. Ought and ought not, can and can not, shall and shall not, all put together, can never amount to anything more. "No law ought to be made, which will lessen upon the whole the mass of general felicity." When I, a legislator or private citizen, say this, what is the simple matter of fact that is expressed? This, and this only, that a sentiment of dissatisfaction is excited in my breast by any such law. So again — "No law shall be made, which will lessen upon the whole the mass of general felicity." What does this signify? That the sentiment of dissatisfaction in me is so strong as to have given birth to a determined will that no such law should ever pass, and that determination so strong as to have produced a resolution on my part to oppose myself, as far as depends on me, to the passing of it, should it ever be attempted — a determination which is the more likely to meet with success, in proportion to the influence, which in the character of legislator or any other, my mind happens to possess over the minds of others.

"No law *can* be made which will do as above. What does this signify? The same will as before, only wrapped up in an absurd and insidious disguise. My will is here so strong, that, as a means of seeing it crowned with success, I use my influence with the persons concerned to persuade them to consider a law which, at the same time, I suppose to be made, in the same point of view as if it were not made; and consequently, to pay no more obedience to it than if it were the command of an unauthorized individual. To compass this design, I make the absurd choice of a term expressive in its original and proper import of a physical impossibility, in order to represent as impossible the very event of the occurrence of which I am apprehensive: — occupied with the contrary persuasion, I raise my voice to the people — tell them the thing is impossible; and they are to have the goodness to believe me, and act in consequence.

A law to the effect in question is a violation of the natural and indefeasible rights of man. What does this signify? That my resolution of using my utmost influence in opposition to such a law is wound up to such a pitch, that should any law be ever enacted, which in my eyes appears to come up to that description, my determination is, to behave to the persons concerned in its enactment, as any man would behave towards those who had been guilty of a notorious and violent infraction of his rights. If necessary, I would corporally oppose them — if necessary, in short, I would endeavour to kill them; just as, to save my own life, I would endeavour to kill any one who was endeavouring to kill me.

These several contrivances for giving to an increase in vehemence, the effect of an increase in strength of argument, may be styled *bawling* upon paper: it proceeds from

ANARCHICAL FALLACIES;

BEING

AN EXAMINATION

OF

THE DECLARATIONS OF RIGHTS

ISSUED DURING

THE FRENCH REVOLUTION.

BY

JEREMY BENTHAM.

A CRITICAL EXAMINATION

OF THE

DECLARATION OF RIGHTS.

PRELIMINARY OBSERVATIONS.

THE Declaration of Rights — I mean the paper published under that name by the French National Assembly in 1791 — assumes for its subject-matter a field of disquisition as unbounded in point of extent as it is important in its nature. But the more ample the extent given to any proposition or string of propositions, the more difficult it is to keep the import of it confined without deviation, within the bounds of truth and reason. If in the smallest corners of the field it ranges over, it fail of coinciding with the line of rigid rectitude, no sooner is the aberration pointed out, than (inasmuch as there is no medium between truth and falsehood) its pretensions to the appellation of a truism are gone, and whoever looks upon it must recognise it to be false and erroneous,—and if, as here, political conduct be the theme, so far as the error extends and fails of being detected, pernicious.

In a work of such extreme importance with a view to practice, and which throughout keeps practice so closely and immediately and professedly in view, a single error may be attended with the most fatal consequences. The more extensive the propositions, the more consummate will be the knowledge, the more exquisite the skill, indispensably requisite to confine them in all points within the pale of truth. The most consummate ability in the whole nation could not have been too much for the task — one may venture to say, it would not have been equal to it. But that, in the sanctioning of each proposition, the most consummate ability should happen to be vested in the heads of the sorry majority in whose hands the plenitude of power happened on that same occasion to be vested, is an event against which the chances are almost as infinity to one.

Here, then, is a radical and all-pervading error — the attempting to give to a work on such a subject the sanction of government; especially of such a government — a government composed of members so numerous, so unequal in talent, as well as discordant in inclinations and affections. Had it been the work of a single hand, and that a private one, and in that character given to the world, every good effect would have been produced by it that could be produced by it when published as the work of government, without any of the bad effects which in case of the smallest error must result from it when given as the work of government.

The revolution, which threw the government into the hands of the penners and adopters of this declaration, having been the effect of insurrection, the grand object evidently is to justify the cause. But by justifying it, they invite it: in justifying past insurrection, they plant and cultivate a propensity to perpetual insurrection in time future; they sow the seeds of anarchy broad-cast: in justifying the demolition of existing authorities, they undermine all future ones, their own consequently in the number. Shallow and reckless vanity! — They imitate in their conduct the author of that fabled law, according to which the assassination of the prince upon the throne gave to the assassin a title to succeed him. "*People, behold your rights! If a single article of them be violated, insurrection is not your right only, but the most sacred of your duties.*" Such is the constant language, for such is the professed object of this source and model of all laws — this self-consecrated oracle of all nations.

The more *abstract* — that is, the more *extensive* the proposition is, the more liable is it to involve a fallacy. Of fallacies, one of the most natural modifications is that which is called *begging the question* — the abuse of making the abstract proposition resorted to for proof, a lever for introducing, in the company of *other* propositions that are nothing to the purpose, the very proposition which is admitted to stand in need of proof.

Is the provision in question fit in point of expediency to be passed into a law for the government of the French nation? That, *mutatis mutandis*, would have been the question put in England: that was the proper question to have been put in relation to each provision it was proposed should enter into the composition of the body of French laws.

Instead of that, as often as the utility of a provision appeared (by reason of the wideness of its extent, for instance) of a doubtful nature, the way taken to clear the doubt was to assert it to be a provision fit to be made law for all men — for all Frenchmen — and for all Englishmen, for example, into the bargain. This medium of proof was the more alluring, inasmuch as to the advantage of removing opposition, was added the pleasure, the sort of titillation so exquisite to the nerve of vanity in a French heart — the satisfaction, to use a homely, but not the less apposite proverb, of teaching grandmothers to suck eggs. Hark! ye citizens of the other side of the water! Can you tell us what rights you have belonging to you? No, that you can't. It's *we* that understand rights: not our own only, but yours into the bargain; while you, poor simple souls! know nothing about the matter.

Hasty generalization, the great stumbling-block of intellectual vanity! — hasty generalization, the rock that even genius itself is so apt to split upon! — hasty generalization, the bane of prudence and of science!

In the British Houses of Parliament, more especially in the most efficient house for business, there prevails a well-known jealousy of, and repugnance to, the voting of abstract propositions. This jealousy is not less general than reasonable. A jealousy of abstract propositions is an aversion to whatever is beside the purpose — an aversion to impertinence.

The great enemies of public peace are the selfish and dissocial passions: — necessary as they are — the one to the very existence of each individual, the other to his security. On the part of these affections, a deficiency in point of strength is never to be apprehended: all that is to be apprehended in respect of them, is to be apprehended on the side of their excess. Society is held together only by the sacrifices that men can be induced to make of the gratifications they demand: to obtain these sacrifices is the great difficulty, the great task of government. What has been the object, the perpetual and palpable object, of this declaration of pretended rights? To add as much force as possible to these passions, already but too strong, — to burst the cords that hold them in, — to say to the selfish passions, there — everywhere — is your prey! — to the angry passions, there — everywhere — is your enemy.

Such is the morality of this celebrated manifesto, rendered famous by the same qualities that gave celebrity to the incendiary of the Ephesian temple.

The logic of it is of a piece with its morality: — a perpetual vein of nonsense, flowing from a perpetual abuse of words, — words having a variety of meanings, where words with single meanings were equally at hand — the same words used in a variety of meanings in the same page, — words used in meanings not their own, where proper words were equally at hand, — words and propositions of the most unbounded signification, turned loose without any of those exceptions or modifications which are so necessary on every occasion to reduce their import within the compass, not only of right reason, but even of the design in hand, of whatever nature it may be; — the same inaccuracy, the same inattention in the penning of this cluster of truths on which the fate of nations was to hang, as if it had been an oriental tale, or an allegory for a magazine: — stale epigrams, instead of necessary distinctions, — figurative expressions preferred to simple ones, — sentimental conceits, as trite as they are unmeaning, preferred to apt and precise expressions, — frippery ornament preferred to the majestic simplicity of good sound sense, — and the acts of the senate loaded and disfigured by the tinsel of the playhouse.

In a play or a novel, an improper word is but a word: and the impropriety, whether noticed or not, is attended with no consequences. In a body of laws — especially of laws given as constitutional and fundamental ones — an improper word may be a national calamity: — and civil war may be the consequence of it. Out of one foolish word may start a thousand daggers.

Imputations like these may appear general and declamatory — and rightly so, if they stood alone: but they will be justified even to satiety by the details that follow. Scarcely an article, which in rummaging it, will not be found a true Pandora's box.

In running over the several articles, I shall on the occasion of each article point out, in the first place, the errors it contains in theory; and then, in the second place, the mischiefs it is pregnant with in practice.

The criticism is verbal: — true, but what else can it be? Words — words without a meaning, or with a meaning too flatly false to be maintained by anybody, are the stuff it is made of. Look to the letter, you find nonsense — look beyond the letter, you find nothing.

ARTICLE I.

Men [all men] are born and remain free, and equal in respect of rights. Social distinctions cannot be founded, but upon common utility.

In this article are contained, grammatically speaking, two distinct sentences. The first is full of error, the other of ambiguity.

In the first are contained four distinguishable propositions, all of them false — all of them notoriously and undeniably false: —

1. That all men are born free.
2. That all men remain free.

3. That all men are born equal in rights.

4. That all men remain (*i. e.* remain for ever, for the proposition is indefinite and unlimited) equal in rights.

All men are born free? All men remain free? No, not a single man: not a single man that ever was, or is, or will be. All men, on the contrary, are born in subjection, and the most absolute subjection — the subjection of a helpless child to the parents on whom he depends every moment for his existence. In this subjection every man is born — in this subjection he continues for years—for a great number of years — and the existence of the individual and of the species depends upon his so doing.

What is the state of things to which the supposed existence of these supposed rights is meant to bear reference? — a state of things prior to the existence of government, or a state of things subsequent to the existence of government? If to a state prior to the existence of government, what would the existence of such rights as these be to the purpose, even if it were true, in any country where there is such a thing as government? If to a state of things subsequent to the formation of government—if in a country where there is a government, in what single instance — in the instance of what single government, is it true? Setting aside the case of parent and child, let any man name that single government under which any such equality is recognised.

All men born free? Absurd and miserable nonsense! When the great complaint—a complaint made perhaps by the very same people at the same time, is — that so many men are born slaves. Oh! but when we acknowledge them to be born slaves, we refer to the laws in being; which laws being void, as being contrary to those laws of nature which are the efficient causes of those rights of man that we are declaring, the men in question are free in one sense, though slaves in another; — slaves, and free, at the same time: — free in respect of the laws of nature — slaves in respect of the pretended human laws, which, though called laws, are no laws at all, as being contrary to the laws of nature. For such is the difference—the great and perpetual difference, betwixt the good subject, the rational censor of the laws, and the anarchist — between the moderate man and the man of violence. The rational censor, acknowledging the existence of the law he disapproves, proposes the repeal of it: the anarchist, setting up his will and fancy for a law before which all mankind are called upon to bow down at the first word — the anarchist, trampling on truth and decency, denies the validity of the law in question, — denies the existence of it in the character of a law, and calls upon all mankind to rise up in a mass, and resist the execution of it.

Whatever is, is, — was the maxim of Des-Cartes, who looked upon it as so sure, as well as so instructive a truth, that everything else which goes by the name of truth might be deduced from it. The philosophical vortex-maker—who, however mistaken in his philosophy and his logic, was harmless enough at least — the manufacturer of identical propositions and celestial vortices — little thought how soon a part of his own countrymen, fraught with pretensions as empty as his own, and as mischievous as his were innocent, would contest with him even this his favourite and fundamental maxim, by which everything else was to be brought to light. *Whatever is, is not* — is the maxim of the anarchist, as often as anything comes across him in the shape of a law which he happens not to like.

"Cruel is the judge," says Lord Bacon, "who, in order to enable himself to torture men, applies torture to the law." Still more cruel is the anarchist, who, for the purpose of effecting the subversion of the laws themselves, as well as the massacre of the legislators, tortures not only the words of the law, but the very vitals of the language.

All men are born equal in rights. The rights of the heir of the most indigent family equal to the rights of the heir of the most wealthy? In what case is this true? I say nothing of hereditary *dignities* and *powers*. Inequalities such as these being proscribed under and by the French government in France, are consequently proscribed by that government under every other government, and consequently have no existence anywhere. For the total subjection of every other government to French government, is a fundamental principle in the law of universal independence — the French law. Yet neither was this true at the time of issuing this Declaration of Rights, nor was it meant to be so afterwards. The 13th article, which we shall come to in its place, proceeds on the contrary supposition: for, considering its other attributes, inconsistency could not be wanting to the list. It can scarcely be more hostile to all other laws than it is at variance with itself.

All men (*i. e.* all human creatures of both sexes) *remain equal in rights.* All men, meaning doubtless all human creatures. The apprentice, then, is equal in rights to his master; he has as much liberty with relation to the master, as the master has with relation to him; he has as much right to command and to punish him; he is as much owner and master of the master's house, as the master himself. The case is the same as between ward and guardian. So again as between wife and husband. The madman has as good a right to confine anybody else, as anybody else has to confine him. The idiot has as much right to govern everybody, as anybody can have to govern him. The physician and the nurse, when called in by the next friend

of a sick man seized with a delirium, have no more right to prevent his throwing himself out of the window, than he has to throw them out of it. All this is plainly and incontestably included in this article of the Declaration of Rights: in the very words of it, and in the meaning — if it have any meaning. Was this the meaning of the authors of it?—or did they mean to admit this explanation as to some of the instances, and to explain the article away as to the rest? Not being idiots, nor lunatics, nor under a delirium, they would explain it away with regard to the madman, and the man under a delirium. Considering that a child may become an orphan as soon as it has seen the light, and that in that case, if not subject to government, it must perish, they would explain it away, I think, and contradict themselves, in the case of guardian and ward. In the case of master and apprentice, I would not take upon me to decide: it may have been their meaning to proscribe that relation altogether;—at least, this may have been the case, as soon as the repugnancy between that institution and this oracle was pointed out; for the professed object and destination of it is to be the standard of truth and falsehood, of right and wrong, in everything that relates to government. But to this standard, and to this article of it, the subjection of the apprentice to the master is flatly and diametrically repugnant. If it do not proscribe and exclude this inequality, it proscribes none: if it do not do this mischief, it does nothing.

So, again, in the case of husband and wife. Amongst the other abuses which the oracle was meant to put an end to, may, for aught I can pretend to say, have been the institution of marriage. For what is the subjection of a small and limited number of years, in comparison of the subjection of a whole life? Yet without subjection and inequality, no such institution can by any possibility take place; for of two contradictory wills, both cannot take effect at the same time.

The same doubts apply to the case of master and hired servant. Better a man should starve than hire himself; — better half the species starve, than hire itself out to service. For, where is the compatibility between liberty and servitude? How can liberty and servitude subsist in the same person? What good citizen is there, that would hesitate to die for liberty? And, as to those who are not good citizens, what matters it whether they live or starve? Besides that every man who lives under this constitution being equal in rights, equal in all sorts of rights, is equal in respect to rights of property. No man, therefore, can be in any danger of starving — no man can have so much as that motive, weak and inadequate as it is, for hiring himself out to service.

Sentence 2. *Social distinctions cannot be founded but upon common utility.* — This proposition has two or three meanings. According to one of them, the proposition is notoriously false: according to another, it is in contradiction to the four propositions that preceded it in the same sentence.

What is meant by *social distinctions?* what is meant by *can?* what is meant by *founded?*

What is meant by *social distinctions?* — Distinctions not respecting equality?— then these are nothing to the purpose. Distinctions in respect of equality? — then, consistently with the preceding propositions in this same article, they can have no existence: not existing, they cannot be founded upon anything. The distinctions above exemplified, are they in the number of the social distinctions here intended? Not one of them (as we have been seeing,) but has subjection — not one of them, but has inequality for its very essence.

What is meant by *can*—can not be founded but upon common utility? Is it meant to speak of what *is* established, or of what *ought to be established?* Does it mean that no social distinctions, but those which it approves as having the foundation in question, are established anywhere? or simply that none such *ought to be* established anywhere? or that, if the establishment or maintenance of such dispositions by the laws be attempted anywhere, such laws ought to be treated as void, and the attempt to execute them to be resisted? For such is the venom that lurks under such words as *can* and *can not*, when set up as a check upon the laws,—they contain all these three so perfectly distinct and widely different meanings. In the first, the proposition they are inserted into refers to practice, and makes appeal to observation — to the observation of other men, in regard to a matter of fact: in the second, it is an appeal to the approving faculty of others, in regard to the same matter of fact: in the third, it is no appeal to anything, or to anybody, but a violent attempt upon the liberty of speech and action on the part of others, by the terrors of anarchical despotism, rising up in opposition to the laws: it is an attempt to lift the dagger of the assassin against all individuals who presume to hold an opinion different from that of the orator or the writer, and against all governments which presume to support any such individuals in any such presumption. In the first of these imports, the proposition is perfectly harmless: but it is commonly so untrue, so glaringly untrue, so palpably untrue, even to drivelling, that it must be plain to everybody it can never have been the meaning that was intended.

In the second of these imports, the proposition may be true or not, as it may hap and at any rate is equally innocent: but

such as will not answer the purpose; for an opinion that leaves others at liberty to be of a contrary one, will never answer the purpose of the passions: and if this had been the meaning intended, not this ambiguous phraseology, but a clear and simple one, presenting this meaning and no other, would have been employed. The third, which may not improperly be termed the *ruffian-like* or threatening import, is the meaning intended to be presented to the weak and timid, while the two innocent ones, of which one may even be reasonable, are held up before it as a veil to blind the eyes of the discerning reader, and screen from him the mischief that lurks beneath.

Can and *can not*, when thus applied — *can* and *can not*, when used instead of *ought* and *ought not* — *can* and *can not*, when applied to the binding force and effect of laws — not of the acts of individuals, nor yet of the acts of subordinate authority, but of the acts of the supreme government itself, are the disguised cant of the assassin: after them there is nothing but *do him*, betwixt the preparation for murder and the attempt. They resemble that instrument which in outward appearance is but an ordinary staff, but which within that simple and innocent semblance conceals a dagger. These are the words that speak daggers—if daggers can be spoken: they speak daggers, and there remains nothing but to use them.

Look where I will, I see but too many laws, the alteration or abolition of which, would in my poor judgment be a public blessing. I can conceive some, — to put extreme and scarcely exampled cases, — to which I might be inclined to oppose resistance, with a prospect of support such as promised to be effectual. But to talk of what the law, the supreme legislature of the country, acknowledged as such, *can* not do! — to talk of a *void* law as you would of a *void* order or a *void* judgment! — The very act of bringing such words into conjunction is either the vilest of nonsense, or the worst of treasons: — treason, not against one branch of the sovereignty, but against the whole: treason, not against this or that government, but against *all* governments.

ARTICLE II.

The end in view of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

Sentence 1. The end in view of every political association, is the preservation of the natural and imprescriptible rights of man.

More confusion — more nonsense, — and the nonsense, as usual, dangerous nonsense. The words can scarcely be said to have a meaning: but if they have, or rather if they had a meaning, these would be the propositions either asserted or implied: —

1. That there are such things as rights anterior to the establishment of governments: for natural, as applied to rights, if it mean anything, is meant to stand in opposition to *legal*, — to such rights as are acknowledged to owe their existence to government, and are consequently posterior in their date to the establishment of government.

2. That these rights *can not* be abrogated by government: for *can not* is implied in the form of the word imprescriptible, and the sense it wears when so applied, is the cut-throat sense above explained.

3. That the governments that exist derive their origin from formal associations, or what are now called *conventions*: associations entered into by a partnership contract, with all the members for partners, — entered into at a day prefixed, for a predetermined purpose, the formation of a new government where there was none before (for as to formal meetings holden under the controul of an existing government, they are evidently out of question here) in which it seems again to be implied in the way of inference, though a necessary and an unavoidable inference, that all governments (that is, self-called governments, knots of persons exercising the powers of government) that have had any other origin than an association of the above description, are illegal, that is, no governments at all; resistance to them, and subversion of them, lawful and commendable; and so on.

Such are the notions implied in this first part of the article. How stands the truth of things? That there are no such things as natural rights — no such things as rights anterior to the establishment of government — no such things as natural rights opposed to, in contradistinction to, legal: that the expression is merely figurative; that when used, in the moment you attempt to give it a literal meaning it leads to error, and to that sort of error that leads to mischief — to the extremity of mischief.

We know what it is for men to live without government — and living without government, to live without rights: we know what it is for men to live without government, for we see instances of such a way of life — we see it in many savage nations, or rather races of mankind; for instance, among the savages of New South Wales, whose way of living is so well known to us: no habit of obedience, and thence no government — no government, and thence no laws — no laws, and thence no such things as rights — no security — no property: — liberty, as against regular controul, the controul of laws and government — perfect; but as against all irregular controul, the mandates of stronger individuals, none. In this state, at a time earlier than the com-

mencement of history — in this same state, judging from analogy, we, the inhabitants of the part of the globe we call Europe, were; — no government, consequently no rights: no rights, consequently no property — no legal security — no legal liberty: security not more than belongs to beasts — forecast and sense of insecurity keener — consequently in point of happiness below the level of the brutal race.

In proportion to the want of happiness resulting from the want of rights, a reason exists for wishing that there were such things as rights. But reasons for wishing there were such things as rights, are not rights; — a reason for wishing that a certain right were established, is not that right — want is not supply — hunger is not bread.

That which has no existence cannot be destroyed — that which cannot be destroyed cannot require anything to preserve it from destruction. *Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, — nonsense upon stilts. But this rhetorical nonsense ends in the old strain of mischievous nonsense: for immediately a list of these pretended natural rights is given, and those are so expressed as to present to view legal rights. And of these rights, whatever they are, there is not, it seems, any one of which any government *can*, upon any occasion whatever, abrogate the smallest particle.

So much for terrorist language. What is the language of reason and plain sense upon this same subject? That in proportion as it is *right* or *proper*, *i. e.* advantageous to the society in question, that this or that right — a right to this or that effect — should be established and maintained, in that same proportion it is *wrong* that it should be abrogated: but that as there is no *right*, which ought not to be maintained so long as it is upon the whole advantageous to the society that it should be maintained, so there is no right which, when the abolition of it is advantageous to society, should not be abolished. To know whether it would be more for the advantage of society that this or that right should be maintained or abolished, the time at which the question about maintaining or abolishing is proposed, must be given, and the circumstances under which it is proposed to maintain or abolish it; the right itself must be specifically described, not jumbled with an undistinguishable heap of others, under any such vague general terms as property, liberty, and the like.

One thing, in the midst of all this confusion, is but too plain. They know not of what they are talking under the name of natural rights, and yet they would have them imprescriptible — proof against all the power of the laws — pregnant with occasions summoning the members of the community to rise up in resistance against the laws. What, then, was their object in declaring the existence of imprescriptible rights, and without specifying a single one by any such mark as it could be known by? This and no other—to excite and keep up a spirit of resistance to all laws — a spirit of insurrection against all governments — against the governments of all other nations instantly, — against the government of their own nation — against the government they themselves were pretending to establish — even that, as soon as their own reign should be at an end. In us is the perfection of virtue and wisdom: in all mankind besides, the extremity of wickedness and folly. Our will shall consequently reign without controul, and for ever: reign now we are living— reign after we are dead.

All nations — all future ages — shall be, for they are predestined to be, our slaves.

Future governments will not have honesty enough to be trusted with the determination of what rights shall be maintained, what abrogated—what laws kept in force, what repealed. Future subjects (I should say future citizens, for French government does not admit of subjects) will not have wit enough to be trusted with the choice whether to submit to the determination of the government of their time, or to resist it. Governments, citizens — all to the end of time — all must be kept in chains.

Such are their maxims — such their premises — for it is by such premises only that the doctrine of imprescriptible rights and unrepealable laws can be supported.

What is the real source of these imprescriptible rights — these unrepealable laws? Power turned blind by looking from its own height: self-conceit and tyranny exalted into insanity. No man was to have any other man for a servant, yet all men were forever to be their slaves. Making laws with imposture in their mouths, under pretence of declaring them — giving for laws anything that came uppermost, and these unrepealable ones, on pretence of finding them ready made. Made by what? Not by a God — they allow of none; but by their goddess, Nature.

The origination of governments from a contract is a pure fiction, or in other words, a falsehood. It never has been known to be true in any instance; the allegation of it does mischief, by involving the subject in error and confusion, and is neither necessary nor useful to any good purpose.

All governments that we have any account of have been gradually established by habit, after having been formed by force; unless in the instance of governments formed by individuals who have been emancipated, or have emancipated themselves, from governments already formed, the governments under w

they were born — a rare case, and from which nothing follows with regard to the rest. What signifies it how governments are formed? Is it the less proper — the less conducive to the happiness of society — that the happiness of society should be the one object kept in view by the members of the government in all their measures? Is it the less the interest of men to be happy — less to be wished that they may be so — less the moral duty of their governors to make them so, as far as they can, at Mogadore than at Philadelphia?

Whence is it, but from government, that contracts derive their binding force? Contracts came from government, not government from contracts. It is from the habit of enforcing contracts, and seeing them enforced, that governments are chiefly indebted for whatever disposition they have to observe them.

Sentence 2. These rights [these imprescriptible as well as natural rights,] are liberty, property, security, and resistance to oppression.

Observe the extent of these pretended rights, each of them belonging to every man, and all of them without bounds. Unbounded liberty; that is, amongst other things, the liberty of doing or not doing on every occasion whatever each man pleases: — Unbounded property; that is, the right of doing with everything around him (with every *thing* at least, if not with every person,) whatsoever he pleases; communicating that right to anybody, and withholding it from anybody: — Unbounded security; that is, security for such his liberty, for such his property, and for his person, against every defalcation that can be called for on any account in respect of any of them: — Unbounded resistance to oppression; that is, unbounded exercise of the faculty of guarding himself against whatever unpleasant circumstance may present itself to his imagination or his passions under that name. Nature, say some of the interpreters of the pretended law of nature — nature gave to each man a right to everything; which is, in effect, but another way of saying—nature has given no such right to anybody; for in regard to most rights, it is as true that what is every man's right is no man's right, as that what is every man's business is no man's business. Nature gave — gave to every man a right to everything: — be it so — true; and hence the necessity of human government and human laws, to give to every man his own right, without which no right whatsoever would amount to anything. Nature gave every man a right to everything before the existence of laws, and in default of laws. This nominal universality and real nonentity of right, set up provisionally by nature in default of laws, the French oracle lays hold of, and perpetuates it under the law and in spite of laws. These anarchical rights which nature had set out with, democratic art attempts to rivet down, and declares indefeasible.

Unbounded liberty — I must still say unbounded liberty; — for though the next article but one returns to the charge, and gives such a definition of liberty as seems intended to set bounds to it, yet in effect the limitation amounts to nothing; and when, as here, no warning is given of any exception in the texture of the general rule, every exception which turns up is, not a confirmation but a contradiction of the rule: — liberty, without any pre-announced or intelligible bounds; and as to the other rights, they remain unbounded to the end: rights of man composed of a system of contradictions and impossibilities.

In vain would it be said, that though no bounds are here assigned to any of these rights, yet it is to be understood as taken for granted, and tacitly admitted and assumed, that they are to have bounds; viz. such bounds as it is understood will be set them by the laws. Vain, I say, would be this apology; for the supposition would be contradictory to the express declaration of the article itself, and would defeat the very object which the whole declaration has in view. It would be self-contradictory, because these rights are, in the same breath in which their existence is declared, declared to be imprescriptible; and imprescriptible, or, as we in England should say, indefeasible, means nothing unless it exclude the interference of the laws.

It would be not only inconsistent with itself, but inconsistent with the declared and sole object of the declaration, if it did not exclude the interference of the laws. It is against the laws themselves, and the laws only, that this declaration is levelled. It is for the hands of the legislator and all legislators, and none but legislators, that the shackles it provides are intended, — it is against the apprehended encroachments of legislators that the rights in question, the liberty and property, and so forth, are intended to be made secure, — it is to such encroachments, and damages, and dangers, that whatever security it professes to give has respect. Precious security for unbounded rights against legislators, if the extent of those rights in every direction were purposely left to depend upon the will and pleasure of those very legislators!

Nonsensical or nugatory, and in both cases mischievous: such is the alternative.

So much for all these pretended indefeasible rights in the lump: their inconsistency with each other, as well as the inconsistency of them in the character of indefeasible rights with the existence of government and all peaceable society, will appear still more plainly when we examine them one by one.

1. *Liberty*, then, is imprescriptible — in-

capable of being taken away — out of the power of any government ever to take away: liberty, — that is, every branch of liberty— every individual exercise of liberty; for no line is drawn — no distinction — no exception made. What these instructors as well as governors of mankind appear not to know, is, that all rights are made at the expense of liberty — all laws by which rights are created or confirmed. No right without a correspondent obligation. Liberty, as against the coercion of the law, may, it is true, be given by the simple removal of the obligation by which that coercion was applied — by the simple repeal of the coercing law. But as against the coercion applicable by individual to individual, no liberty can be given to one man but in proportion as it is taken from another. All coercive laws, therefore (that is, all laws but constitutional laws, and laws repealing or modifying coercive laws,) and in particular all laws creative of liberty, are, as far as they go, abrogative of liberty. Not here and there a law only — not this or that possible law, but almost all laws, are therefore repugnant to these natural and imprescriptible rights: consequently null and void, calling for resistance and insurrection, and so on, as before.

Laws creative of rights of property are also struck at by the same anathema. How is property given? By restraining liberty; that is, by taking it away so far as is necessary for the purpose. How is your house made yours? By debarring every one else from the liberty of entering it without your leave. But

2. *Property.* Property stands second on the list,—proprietary rights are in the number of the natural and imprescriptible rights of man — of the rights which a man is not indebted for to the laws, and which cannot be taken from him by the laws. Men — that is, every man (for a general expression given without exception is an universal one) has a right to property, to proprietary rights, *a right which* cannot be taken away from him by the laws. To proprietary rights. Good: but in relation to what subject? for as to proprietary rights — without a subject to which they are referable — without a subject in or in relation to which they can be exercised — they will hardly be of much value, they will hardly be worth taking care of, with so much solemnity. In vain would all the laws in the world have ascertained that I have a right to something. If this be all they have done for me—if there be no specific subject in relation to which my proprietary rights are established, I must either take what I want without right, or starve. As there is no such subject specified with relation to each man, or to any man (indeed how could there be?) the necessary inference (taking the passage literally) is, that every man has all manner of proprietary rights with relation to every subject of property without exception: in a word, that every man has a right to every thing. Unfortunately, in most matters of property, what is every man's right is no man's right; so that the effect of this part of the oracle, if observed, would be, not to establish property, but to extinguish it — to render it impossible ever to be revived: and this is one of the rights declared to be imprescriptible.

It will probably be acknowledged, that according to this construction, the clause in question is equally ruinous and absurd: — and hence the inference may be, that this was not the construction — this was not the meaning in view. But by the same rule, every possible construction which the words employed can admit of, might be proved not to have been the meaning in view: nor is this clause a whit more absurd or ruinous than all that goes before it, and a great deal of what comes after it. And, in short, if this be not the meaning of it, what is? Give it a sense — give it any sense whatever, — it is mischievous: — to save it from that imputation, there is but one course to take, which is to acknowledge it to be nonsense.

Thus much would be clear, if anything were clear in it, that according to this clause, whatever proprietary rights, whatever property a man once has, no matter how, being imprescriptible, can never be taken away from him by any law: or of what use or meaning is the clause? So that the moment it is acknowledged in relation to any article, that such article is my property, no matter how or when it became so, that moment it is acknowledged that it can never be taken away from me: therefore, for example, all laws and all judgments, whereby anything is taken away from me without my free consent — all taxes, for example, and all fines — are void, and, as such, call for resistance and insurrection, and so forth, as before.

3. *Security.* Security stands the third on the list of these natural and imprescriptible rights which laws did not give, and which laws are not in any degree to be suffered to take away. Under the head of security, liberty might have been included, so likewise property: since security for liberty, or the enjoyment of liberty, may be spoken of as a branch of security: — security for property, or the enjoyment of proprietary rights, as another. Security for person is the branch that seems here to have been understood: — security for each man's person, as against all those hurtful or disagreeable impressions (exclusive of those which consist in the mere disturbance of the enjoyment of liberty,) by which a man is affected in his person; loss of life — loss of limbs — loss of the use of limbs — wounds, bruises, and the like. All laws

are null and void, then, which on any account or in any manner seek to expose the person of any man to any risk — which appoint capital or other corporal punishment — which expose a man to personal hazard in the service of the military power against foreign enemies, or in that of the judicial power against delinquents: — all laws which, to preserve the country from pestilence, authorize the immediate execution of a suspected person, in the event of his transgressing certain bounds.

4. *Resistance to oppression.* Fourth and last in the list of natural and imprescriptible rights, resistance to oppression — meaning, I suppose, the right to resist oppression. What is oppression? Power misapplied to the prejudice of some individual. What is it that a man has in view when he speaks of oppression? Some exertion of power which he looks upon as misapplied to the prejudice of some individual — to the producing on the part of such individual some suffering, to which (whether as forbidden by the laws or otherwise) we conceive he ought not to have been subjected. But against everything that can come under the name of oppression, provision has been already made, in the manner we have seen, by the recognition of the three preceding rights; since no oppression can fall upon a man which is not an infringement of his rights in relation to liberty, rights in relation to property, or rights in relation to security, as above described. Where, then, is the difference? — to what purpose this fourth clause after the three first? To this purpose: the mischief they seek to prevent, the rights they seek to establish, are the same; the difference lies in the nature of the remedy endeavoured to be applied. To prevent the mischief in question, the endeavour of the three former clauses is, to tie the hand of the legislator and his subordinates, by the fear of nullity, and the remote apprehension of general resistance and insurrection. The aim of this fourth clause is to raise the hand of the individual concerned to prevent the apprehended infraction of his rights at the moment when he looks upon it as about to take place.

Whenever you are about to be oppressed, you have a right to resist oppression: whenever you conceive yourself to be oppressed, conceive yourself to have a right to make resistance, and act accordingly. In proportion as a law of any kind — any act of power, supreme or subordinate, legislative, administrative, or judicial, is unpleasant to a man, especially if, in consideration of such its unpleasantness, his opinion is, that such act of power ought not to have been exercised, he of course looks upon it as oppression: as often as anything of this sort happens to a man — as often as anything happens to a man to inflame his passions, — this article, for fear his passions should not be sufficiently inflamed of themselves, sets itself to work to blow the flame, and urges him to resistance. Submit not to any decree or other act of power, of the justice of which you are not yourself perfectly convinced. If a constable call upon you to serve in the militia, shoot the constable and not the enemy; — if the commander of a press-gang trouble you, push him into the sea — if a bailiff, throw him out of the window. If a judge sentence you to be imprisoned or put to death, have a dagger ready, and take a stroke first at the judge.

ARTICLE III.

The principle of every sovereignty [government] resides essentially in the nation. No body of men — no single individual — can exercise any authority which does not expressly issue from thence.

Of the two sentences of which this article is composed, the first is perfectly true, perfectly harmless, and perfectly uninstructive. Government and obedience go hand in hand. Where there is no obedience, there is no government; in proportion as obedience is paid, the powers of government are exercised. This is true under the broadest democracy: this is equally true under the most absolute monarchy. This can do no harm — can do no good, anywhere. I speak of its natural and obvious import taken by itself, and supposing the import of the word principle to be clear and unambiguous, as it is to be wished that it were, that is, taking it to mean *efficient cause.* Of power on the one part, obedience on the other is most certainly everywhere the efficient cause.

But being harmless, it would not answer the purpose, as delivered by the immediately succeeding sentence: being harmless, this meaning is not that which was in view. It is meant as an antecedent proposition, on which the next proposition is grounded in the character of a consequent. No body of men, no individual, can exercise any authority which does not issue from the nation in an express manner. *Can* — still the ambiguous and envenomed *can.* What cannot they in point of fact? Cannot they exercise authority over other people, if and so long as other people submit to it? This cannot be their meaning: this cannot be the meaning, not because it is an untrue and foolish one, but because it contributes nothing to the declared purpose. The meaning must be here, as elsewhere, that of every authority not issuing from the nation in an express manner, every act is void: consequently ought to be treated as such — resisted, risen up against, and overthrown. Issuing from the nation in an express manner, is having been conferred by the nation, by a formal act, in the exercise of which the nation, *i. e.* the whole nation, joined.

An authority issues from the nation in one sense, in the ordinary implied manner, which the nation submits to the exercise of, having been in the habit of submitting to it, every man as long as he can remember, or to some superior authority from which it is derived. But this meaning it was the evident design of the article to put a negative upon; for it would not have answered the disorganizing purpose, all along apparent, and more than once avowed. It is accordingly for the purpose of putting a negative upon it, that the word *expressément — in an express way or manner* — is subjoined. Every authority is usurped and void, to which a man has been appointed in any other mode than that of popular election; and popular election made by the nation — that is, the whole nation (for no distinction or division is intimated,) in each case.

And this is expressly declared to be the case, not only in France, under the government of France, but *everywhere*, and under every government whatsoever. Consequently, all the acts in every government in Europe, for example, are void, excepted, perhaps, or rather not excepted, two or three of the Swiss Cantons;—the persons exercising the powers of government in these countries, usurpers — resistance to them, and insurrection against them, lawful and commendable.

The French government itself not excepted: — whatever is, has been, or is to be, the government of France. Issue from *the* nation: that is, from the *whole* nation, for no part of it is excluded. Women consequently included, and children — children of every age. For if women and children are not part of the nation, what are they? Cattle? Indeed, how can a single soul be excluded, when all men—all human creatures—are, and are to be, equal in regard to rights—in regard to all sorts of rights, without exception or reserve?

ARTICLE IV.

Liberty consists in being able to do that which is not hurtful to another, and therefore the exercise of the natural rights of each man has no other bounds than those which insure to the other members of the society the enjoyment of the same rights. These bounds cannot be determined but by the law.

In this article, three propositions are included: —

Proposition 1. Liberty consists in being able to do that which is not hurtful to another. What! in that, and nothing else? Is not the liberty of doing mischief liberty? If not, what is it? and what word is there for it in the language, or in any language by which it can be spoken of? How childish, how repugnant to the ends of language, is this perversion of language! — to attempt to confine a word in common and perpetual use, to an import to which nobody ever confined it before, or will continue to confine it! And so I am never to know whether I am at liberty or not to do or to omit doing one act, till I see whether or no there is anybody that may be hurt by it — till I see the whole extent of all its consequences? Liberty! What liberty? — as against what power? as against coercion from what source? As against coercion issuing from the law? — then to know whether the law have left me at liberty in any respect in relation to any act, I am to consult not the words of the law, but my own conception of what would be the consequences of the act. If among these consequences there be a single one by which anybody would be hurt, then, whatever the law says to me about it, I am not at liberty to do it. I am an officer of justice, appointed to superintend the execution of punishments ordered by justice: — if I am ordered to cause a thief to be whipped, — to know whether I am at liberty to cause the sentence to be executed, I must know whether whipping would hurt the thief: if it would, then I am not at liberty to whip the thief — to inflict the punishment which it is my duty to inflict.

Proposition 2. And therefore the exercise of the natural rights of each man has no other bounds than those which insure to the other members of the society the enjoyment of those same rights. Has no other bounds? Where is it that it has no other bounds? In what nation — under what government? If under any government, then the state of legislation under that government is in a state of absolute perfection. If there be no such government, then, by a confession necessarily implied, there is no nation upon earth in which this definition is conformable to the truth.

Proposition 3. These bounds cannot be determined but by the law. More contradiction, more confusion. What then? — this liberty, this right, which is one of four rights that existed before laws, and will exist in spite of all that laws can do, owes all the boundaries it has, all the extent it has, to the laws. Till you know what the laws say to it, you do not know what there is of it, nor what account to give of it: and yet it existed, and that in full force and vigour, before there were any such things as laws; and so will continue to exist, and that for ever, in spite of anything which laws can do to it. Still the same inaptitude of expressions — still the same confusion of that which it is supposed *is*, with that which it is conceived ought to be.

What says plain truth upon this subject? What is the sense most approaching to this nonsense?

The liberty which the law *ought* to allow of, and leave in existence — leave uncoerced, unremoved — is the liberty which concerns those acts only, by which, if exercised, no

damage would be done to the community upon the whole; that is, either no damage at all, or none but what promises to be compensated by at least equal benefit.

Accordingly, the exercise of the rights allowed to and conferred upon each individual, ought to have no other bounds set to it by the law, than those which are necessary to enable it to maintain every other individual in the possession and exercise of such rights as it is consistent with the greatest good of the community that he should be allowed. The marking out of these bounds ought not to be left to anybody but the legislator acting as such—that is, to him or them who are acknowledged to be in possession of the sovereign power: that is, it ought not to be left to the occasional and arbitrary declaration of any individual, whatever share he may possess of subordinate authority.

The word *autrui* — another, is so loose,— making no distinction between the community and individuals, — as, according to the most natural construction, to deprive succeeding legislators of all power of repressing, by punishment or otherwise, any acts by which no individual sufferers are to be found; and to deprive them beyond a doubt of all power of affording protection to any man, woman, or child, against his or her own weakness, ignorance, or imprudence.

ARTICLE V.

The law has no right to forbid any other actions than such as are hurtful to society. Whatever is not forbidden by the law, cannot be hindered; nor can any individual be compelled to do that which the law does not command.

Sentence 1. The law has no right (*n'a le droit*) to forbid any other actions than such as are hurtful to society. The law has no right (*n'a le droit*, not *ne peut pas.*) This, for once, is free from ambiguity. Here the mask of ambiguity is thrown off. The avowed object of this clause is to preach constant insurrection, to raise up every man in arms against every law which he happens not to approve of. For, take any such action you will, if the law have no right to forbid it, a law forbidding it is null and void, and the attempt to execute it an oppression, and resistance to such attempt, and insurrection in support of such resistance, legal, justifiable, and commendable.

To have said that no law ought to forbid any act that is not of a nature prejudical to society, would have answered every good purpose, but would not have answered the purpose which is intended to be answered here.

A government which should fulfil the expectations here held out, would be a government of absolute perfection. The instance of a government fulfilling these expectations, never has taken place, nor till men are angels ever can take place. Against every government which fails in any degree of fulfilling these expectations, then, it is the professed object of this manifesto to excite insurrection: here, as elsewhere, it is therefore its direct object to excite insurrection at all times against every government whatsoever.

Sentence 2. Whatever is not forbidden by the law, cannot be hindered, nor can any individual be compelled to do what the law does not command.

The effect of this law, for want of the requisite exceptions or explanations, is to annihilate, for the time being and for ever, all powers of command: all power, the exercise of which consists in the issuing and inforcing obedience to particular and occasional commands; domestic power, power of the police, judicial power, military power, power of superior officers, in the line of civil administration, over their subordinates. If I say to my son, Do not mount that horse, which you are not strong enough to manage; if I say to my daughter, Do not go to that pond, where there are young men bathing; they may set me at defiance, bidding me show them where there are anything about mounting unruly horses, or going where there are young men bathing, in the laws. By the same clause, they may each of them justify themselves in turning their backs upon the lesson I have given them; while my apprentice refuses to do the work I have given him; and my wife, instead of providing the meals I had desired her to provide for ourselves and family, tells me she thinks fit to go and dine elsewhere. In the existing order of things, under any other government than that which was here to be organized, whatever is commanded or forbidden in virtue of a power which the law allows of and recognises, is virtually and in effect commanded and forbidden by the law itself, since, by the support it gives to the persons in question in the exercise of their respective authorities, it shows itself to have adopted those commands, and considered them as its own before they are issued, and that, whatever may be the purport of them, so long as they are confined within the limits it has marked out. But all these existing governments being fundamentally repugnant to the rights of man, are null and void, and incapable of filling up this or any other gap in the texture of the new code. Besides, this right of not being hindered from doing anything which the law itself has not forbidden, nor compelled to do anything which it has not commanded, is an article of natural, unalienable, sacred, and imprescriptible right, over which political laws have no sort of power; so that the attempt to fill up the gap, and to establish any such power of commanding or forbidding what is not already commanded and forbidden by the

law, would be an act of usurpation, and all such powers so attempted to be established, null and void. How also can any such powers subsist in a society of which all the members are free and equal in point of rights?

Admit, however, that room is given for the creation of the powers in question by the spirit, though not by the letter of this clause — what follows? That in proportion as it is harmless, it is insignificant, and incapable of answering its intended purpose. This purpose is to protect individuals against oppressions, to which they might be subjected by other individuals possessed of powers created by the law, in the exercise or pretended exercise of those powers. But if these powers are left to the determination of succeeding and (according to the doctrine of this code) inferior legislatures, and may be of any nature and to any extent which these legislatures may think fit to give them, — what does the protection here given amount to, especially as against such future legislatures, for whose hands all the restraints which it is the object of the declaration to provide are intended? Mischievous or nugatory is still the alternative.

The employment of the improper word *can*, instead of the proper word *shall*, is not unworthy of observation. Shall is the language of the legislator who knows what he is about, and aims at nothing more: — can, when properly employed in a book of law, is the language of the private commentator or expositor, drawing inferences from the text of the law — from the acts of the legislator, or what takes the place of the acts of the legislator — the practice of the courts of justice.

ARTICLE VI.

The law is the expression of the general will. Every citizen has the right of concurring in person, or by his representatives, in the formation of it: it ought to be the same for all, whether it protect, or whether it punish. All the citizens being equal in its eyes, are equally admissible to all dignities, public places, and employments, according to their capacity, and without any other distinction than that of their virtues and their talents.

This article is a *hodge-podge*, containing a variety of provisions, as wide from one another as any can be within the whole circuit of the law: some relating to the constitutional branch, some to the civil, some to the penal; and, in the constitutional department, some relating to the organization of the supreme power, others to that of the subordinate branches.

Proposition 1. The law is the expression of the general will. The law? What law is the expression of the general will? Where is it so? In what country?—at what period of time? In no country — at no period of time — in no other country than France — nor even in France. As to *general*, it means universal; for there are no exceptions made, — women, children, madmen, criminals — for these being human creatures, have already been declared equal in respect of rights: nature made them so; and even were it to be wished that the case were otherwise, nature's work being unalterable, and the rights unalienable, it would be to no purpose to attempt it.

What is certain is, that in any other nation at any rate, no such thing as a law ever existed to which this definition could be applied. But that is nothing to the purpose, since a favourite object of this effusion of universal benevolence, is to declare the governments of all other countries dissolved, and to persuade the people that the dissolution has taken place.

But anywhere—even in France—how can the law be the expression of the universal or even the general will of all the people, when by far the greater part have never entertained any will, or thought at all about the matter; and of those who have, a great part (as is the case with almost all laws made by a large assembly) would rather it had not taken place.

Sentence 2. Every citizen has the right of concurring in person, or by his representatives, in the formation of it.

Here the language changes from the enunciation of the supposed practice, to the enunciation of the supposed matter of right. Why does it change? After having said so silly a thing as that there is no law anywhere, but what was the expression of the will of every member of the community, what should have hindered its going on in the same silly strain, and saying that everybody did concur — did join in the formation of it? However, as the idea of right is, in this second sentence at any rate, presented by its appropriate term, the ambiguity diffused by the preceding sentence is dissipated; and now it appears beyond a doubt, that every law in the formation of which any one citizen was debarred from concurring, either in person or by his representatives, is, and ever will be, here and there and everywhere, a void law.

To characterize proxies, the French language, like the English, has two words — representatives and deputies: the one liable to misconstruction, the other not, — to misconstruction, and such misconstruction as to be made expressive of a sense directly opposite to that which appears here to have been intended; the one tainted with fiction as well as ambiguity, the other expressing nothing but the plain truth. Being so superior to imitation — so free to choose — not tied down by usage as people in Britain are — how come they to have taken the English word representatives, which has given occasion to

so many quibbles, instead of their own good word deputies, which cannot give occasion to anything like a quibble? The king of Great Britain is acknowledged to be the representative of the British nation, in treating with foreign powers; but does the whole nation ever meet together and join in signing an authority to him so to do? The king of Great Britain is acknowledged, in this instance, to represent the British nation; but, in this instance, is it ever pretended that he has been deputed by it? The parliamentary electors have been said to represent the non-electors; and the members of parliament to represent both; but did anybody ever speak of either members or electors as having been deputed by the non-electors? Using the improper word representatives, instead of the proper word deputies, the French might be saddled with the British constitution, for anything there is in this clause to protect them from so horrible a grievance. Representatives sounded better, perhaps, than deputies. Men who are governed by sounds, sacrifice everything to sound: they neither know the value of precision, nor are able to attain it.

Sentence 3. It [the law] ought to be the same for all, whether it protect or whether it punish — [*i. e.* as well in respect of the protection it affords, as in respect of the punishment it inflicts.]

This clause appears reasonable in the main, but in respect to certain points it may be susceptible of explanations and exceptions, from the discussion of which it might have been as well if all posterity had not been debarred.

As to protection, English law affords a punishment, which consists in being put out of the protection of the law; in virtue of which a man is debarred from applying for redress from any kind of injury. For my own part, I do not approve of any such punishment: but perhaps they do, who having it in their power to abrogate it, yet retain it. In France, I suppose it is approved of, where, in a much severer form than the English, it has been so much practised. This species of punishment is inhibited for ever, by the letter at least of this clause. As to the spirit of it, one of the ruling features of this composition from end to end is, that the spirit of it is incomprehensible.

Under the English law, heavier damages are given in many instances to the ministers of justice, acting as such, in case of ill-founded prosecutions against them, for supposed injuries to individuals, than would be given to private individuals aggrieved by prosecutions for the same injuries. The notion evidently is, that the servants of the public, not having so strong an interest in defending the rights of the public as individuals have in defending their own, the public man would be apt to be deterred from doing his duty if the encouragement he have to do it were no greater than the encouragement which the individual has to defend his right. These examples, not to plunge further into details, appear sufficient to suggest a reasonable doubt, whether, even in this instance, the smack-smooth equality, which rolls so glibly out of the lips of the rhetorician, be altogether compatible with that undeviating conformity to every bend and turn in the line of utility which ought to be the object of the legislator.

As to punishment, a rule as strictly subordinate to the dictates of utility, as the doctrine of undeviating equality is congenial to the capricious play of the imagination, is, not in any instance to employ more punishment than is necesary to the purpose. Where, as between two individuals, the measure of sensibility is different, a punishment which in name—that is, according to every description which could be given of it in and by the law, would be equal in the two instances—would in effect be widely different. Fifty lashes may, in the estimation of the law, be equal to fifty lashes; but it is what no man can suppose, that the suffering which a hard-working young man, or even a young woman of the hard-working class, would undergo from the application of fifty lashes, could be really equal in intensity to that which must have been endured from the same nominal punishment (were even the instrument and force applied the same) by the Countess Lapuchin, till then the favourite, and one of the finest ornaments of the court of a Russian empress. Banishment would, upon the face of the law, be equal to banishment: but it will not readily be admitted, that to a servant of the public, who happens to have nothing to live upon but a salary, the receipt of which depends upon attendance at his office, it would be no greater punishment than to a sturdy labourer, who in one country as well as in another, may derive an equal livelihood from the labour of his hands.

Those, if any such there are, to whom distinctions such as these would appear consonant to reason and utility, might perhaps regard them as not irreconcilable with the language of this clause. But others might think them either not reasonable, or, though reasonable, not thus reconcilable. And were any such distinctions to be ingrafted into the law by any succeeding legislators, those who did not approve of the alteration would, if at all actuated by any regard to the tenor and spirit of this declaration, raise a cry of aristocracy, and pronounce the alteration void: and then comes resistance and insurrection, and all the evils in their train.

Sentence 4. All the citizens being equal in its eyes, are all of them admissible to all dignities, public places, and employments,

according to their capacity, and without any other distinction than that of their virtues and their talents.

This is one of the few clauses, not to say the only one, which does not seem liable to very serious objection: there is nothing to object to in its general spirit and meaning, though perhaps there is something as to the expression. In general, it were to be wished that no class of men should stand incapacitated with regard to any object of competition by any general law: nor can anything be said in favour of those hereditary incapacitations which suggested and provoked this clause. Yet as governments are constituted, and as the current of opinion runs, there may be cases where some sorts of incapacitation in regard to office seem called for by the purpose which operated as the final cause in the institution of the office. It seems hardly decent or consistent, for example, to allow to a Jew the faculty of presenting to a Christian benefice with cure of souls: though, by a judgment of no very ancient date, the law of England was made to lend its sanction to an appointment of this sort. As inconsistent does it appear to admit a Catholic patron to appoint to a Protestant, or a Protestant to a Catholic benefice; at least so long as diversities in matters of religious profession continue to have ill-will for their accompaniment. Ecclesiastical patronage in the hands of individuals, is indeed one of the abuses, or supposed abuses, which it was the object of this code to eradicate: and since then, the maintenance of an ecclesiastical establishment of any kind at the expense of the state, has, in France, been added to the catalogue of abuses. But at the time of the promulgation of this code, the spirit of subversion had not proceeded this length: ecclesiastical offices were still kept up; though, in relation to all these, together with all other offices, the right of nomination was given to assemblies of the people. The incongruity of admitting the professor of a rival religion to the right of suffrage, would therefore be the same in this instance as in the case where the nomination rested in a single breast, though the danger would seldom be of equal magnitude.

Madmen, and criminals of the worst description, are equally protected against exclusion from any office, or the exercise of any political right. As to offices which under this system a man cannot come into possession of but by election, the inconvenience, it may be said, cannot be great; for though not incapable of being elected, there is no danger of their being so. But this is not the case with regard to any of those political privileges which this system gives a man in his own right, and as a present derived from the hands of nature—such as the right of suffrage with regard to offices. Were an assassin, covered with the blood of the murdered person, and ordered for execution on the second of the month — or, which is doubtless esteemed worse, a royalist convicted of adherence to the government under which his country had existed for so many hundred years — to put in his claim for admittance to give his suffrage in the election of a deputy to the convention, or of a mayor of the Paris municipality, I see not how his claim could be rejected without an infringement of this clause. Indeed, if this right, like all the others, be, as we are told over and over again, a present of the goddess Nature, and proof against all attacks of law, what is to be done, and what remedy can be administered by the law? Something, it is true, is said of talents and of virtues; and the madman, it may be said, is deficient in talents, and the criminal in point of virtues. But neither talents nor virtues are mentioned otherwise than as marks of pre-eminence and distinction, recommending the possessors to a proportionable degree of favour and approbation with a view to preference: nothing is said of any deficiency in point of talent or virtue as capable of shutting the door against a candidate: distinction is the word, not exception, — distinction among persons all within the list, not exception excluding persons out of the list.

So far from admitting the exclusion of classes of men, however incompetent, the provision does not so much as admit of the exclusion of individuals from any office. An individual, or a knot of individuals, bent upon affording a constant obstruction to all business, and selected perhaps for that very purpose, might be returned to the supreme assembly, or any other; nor could they be got rid of without a breach of the natural and inviolable rights of man, as declared and established by this clause.

What makes the matter still the clearer is, that the particular provision is given in the character of a consequence of, that is, as being already included in the preceding article, declaring the perfect and unchangeable equality of mankind in respect of all manner of rights:—"The citizens being all of them equal in its sight, are all of them equally admissible," and so forth. As the general proposition, therefore, admits of no exception to it, no more can this particular application of it have one. Virtues and talents sound prettily, and flatter the imagination, but in point of clearness, had that been the object, the clause, such as it is, would have been all the better had it ended with the words public places and employments; and had all that is said about capacity, and distinction, and virtues, and talents, been left out.

ARTICLE VII.

No one can be accused, arrested or de-

tained, but in the cases determined by the law, and according to the forms prescribed by the law. Those who solicit, issue, execute, or cause to be executed, arbitrary orders, ought to be punished; but every citizen, summoned or arrested in virtue of the law, ought to obey that instant: he renders himself culpable by resistance.

Sentence 1. No one can be accused, arrested, or detained, but in the cases determined by the law, and according to the forms prescribed by the law.

Here again we have the improper word *can*, instead of *ought*. Here, however, the power of the law is recognized, and passes unquestioned: the clause, therefore, is in so far not mischievous and absurd, but only nugatory, and beside the purpose. The professed object of the whole composition is to tie the hands of the law, by declaring pretended rights over which the law is never to have any power,—liberty, the right of enjoying liberty: — here this very liberty is left at the mercy and good pleasure of the law. As it neither answers the purpose it professes to have in view, so neither does it fulfil the purpose which it ought to have had in view, and might have fulfilled,—the giving the subject, or, to speak in the French style, the citizen, that degree of security which, without attempting to bind the hands of succeeding legislators, might have been given him against arbitrary mandates.

There is nothing in this article which might not be received, and without making any alteration, into the constitutional codes of Prussia, Denmark, Russia, or Morocco. It is or is not law — (no matter which, for I put it so only for supposition sake) — it is law, let us say, in those countries, that upon order signed or issued by any one of a certain number of persons—suppose ministers of state—any individual may be arrested at any time, and detained in any manner and for any length of time, without any obligation on the part of the person issuing the order to render account of the issuing or of the execution of it to anybody but the monarch. If such were the law in these countries respectively, before the establishment of such a law as this clause imports, such may it remain, and that without effecting any abridgment of the powers of the ministers in question, or applying any check to the abuses of those powers, or affording the subject any security or remedy against the abuses of those powers, after the introduction of such article.

The case in which it is determined by the law, that a man may be so arrested and detained, is the case of an order having been issued for that purpose by any one in such a list of ministers; and the form in which the order for that purpose must be conceived, is the wording in the form in which orders to the purpose in question have been in use to be worded, or, in short, any other form which the ministers in question may be pleased to give it. If to this interpretation any objection can be made, it must be grounded on the ambiguity of the word *the law*—an ambiguity resulting from the definition above given of it in this declaratory code. If the laws are all of them *ipso facto* void, as this manifesto has, by the preceding article, declared them to be in all countries where the laws are made by other authority than that of the whole body of the people, then indeed the security intended to be afforded is afforded; because in that case no arrest or detention can be legal, till the ground and form of it have been preordained by a law so established. On the contrary, if that article be to be explained away, and countries foreign to France are to be left in possession of their laws, then the remedy and security amounts to nothing, for the reason we have seen. Nugatory or mischievous: such is the option everywhere else — such is the option here.

Sentence 2. Those who solicit, issue, execute or cause to be executed, arbitrary orders, ought to be punished.

Yes, says a Moullah of Morocco, after the introduction of this article into the Morocco code, — yes, if an order to the prejudice of the liberty of the subject be illegal, it is an arbitrary order, and the issuing of it is an offence against the liberty of the subject, and as such ought to be, and shall be punished. If one dog of an infidel presume to arrest or detain another dog of an infidel, the act of arrest and detention is an arbitrary one, and nothing can be more reasonable than what the law requires, viz. that the presuming dog be well bastinadoed. But if one of the faithful, to every one of whom the sublime emperor, crowned with the sun and moon, has given the command over all dogs, think fit to shut up this or that dog in a strange kennel, what is there of arbitrariness in that? It is no more than what our customs, which are our laws, allow of everywhere, when the true believers have dogs under them.

The security of the individual in this behalf depends, we see, upon the turn given to that part of the law which occupies itself in establishing the powers necessary to be established for the furtherance of justice. Had the penners of this declaration been contented with doing what they might have done consistently with reason and utility, in this view they might have done thus:—they might have warned and instructed them to be particular in the indication of the cases in which they would propose to grant such powers, and in the indication of the forms according to which the powers so granted should be exercised;—for instance, that no man should be arrested but for some one in the list of cases enumerated by the law as capable of warranting

an arrest; nor without the specification of that case in an instrument, executed for the purpose of warranting such arrest; nor unless such instrument were signed by an officer of such a description; and so on: — not to attempt to exhibit a code of such importance, extent, and nicety, in the compass of a parenthesis. In doing so, they would have done what would at least have been innocent, and might have had its use: — but in doing so, they would not have prosecuted their declared purpose; which was not only to tutor and lecture their more experienced and consequently more enlightened successors, but to tie their hands, and keep their fellow-citizens in a state of constant readiness to cut their throats.

Sentence 3. But every citizen summoned or arrested in virtue of the law, ought to obey that instant: he renders himself culpable by resistance.

This clause is mighty well in itself: — the misfortune is, that it is nothing to the purpose. The title of this code is the Declaration of Rights; and the business of it is accordingly, in every other part of it, to declare such rights, real or supposed, as are thought fit to be declared. But what is here declared is for once a *duty;* the mention of which has somehow or other slipt in, as it were through inadvertence. The things that people stand most in need of being reminded of, are, one would think, their duties: — for their rights, whatever they may be, they are apt enough to attend to of themselves. Yet it is only by accident, under a wrong title, and as it were by mistake, and in this single instance, that anything is said that would lead the body of the people to suspect that there were any such things appertaining to them as *duties*.

He renders himself culpable by resistance: Oh yes — certainly, unless the law for the infringement of which he is arrested, or attempted to be arrested, be an oppresive one: or unless there be anything oppressive in the behaviour of those by whom the arrest or detention is performed. If, for instance, there be anything of the insolence of office in their language or their looks, — if they lay hold of him on a sudden, without leaving him time to run away, — if they offer to pinion his arms while he is drawing his sword, without waiting till he have drawn it, — if they lock the door upon him, or put him into a room that has bars before the window, — or if they come upon him the same night, while the evidences of his guilt are about him and all fresh, instead of waiting on the outside of the door all night till he have destroyed them.* In any of these cases, as well as a thousand others that might be mentioned, can there be any doubts about the oppression? but by Article II. of this same code—an article which has already been established and placed out of the reach of cavil, the right of resistance to oppression is among the number of those rights which nature hath given, and which it is not in the power of man to take away.

ARTICLE VIII.

The law ought not to establish any other punishments than such as are strictly and evidently necessary; and no one can be punished but in virtue of a law established and promulgated before the commission of the offence, and applied in a legal manner.

Sentence 1. The law ought not to establish any other punishments than such as are strictly and evidently necessary.

The instruction administered by this clause is not great: so far, however, is well, that the purpose declared in this instrument is departed from, and nothing but instruction is here attempted to be given; and which succeeding legislators may be governed by or not as they think fit. It is well, indeed, that penal laws not conforming to this condition are not included in the sentence of nullity so liberally dealt out on other occasions, since, if they were, it would be difficult enough to find a penal law anywhere that would stand the test, from whatever source — pure or impure, democratical, aristocratical, or monarchical — it were derived.

No rules of any tolerable degree of particularity and precision have ever yet been laid down for adjusting either the quantum or the quality of punishments — none such at least could have been in the contemplation of the framers of this code: and supposing such rules laid down, and framed with the utmost degree of particularity and precision of which the nature of the subject is susceptible, it would

* By a subsequent decree of the Convention, this silly provision was actually made law, under the notion of favouring liberty. The liberty of doing mischief, it certainly does favour, as certainly as it disfavours the liberty of preventing it. Ask for a reason: *a man's house*, you are told, *is his castle*. Blessed liberty! — where the trash of sentiments—where epigrams, pass for reasons, and poetry gives rule to law! But if a man's house be his castle by night, how comes it not to be so by day? And if a house be a castle to the owner, why not to everybody else in whose favour the owner chooses to make it so? By day or by night, is it less hardship to a suspected person to have his house searched, than to an unsuspected one? Here we have the mischief and the absurdity of the ancient ecclesiastical asylums, without the reason.

The course of justice in England is still obstructed to a certain degree by this silly epigram, worthy of the age which gave it birth. Delinquents, like foxes, are to have law given them; that is, are to have chances of escape given them on purpose, as if it were to make the better sport for the hunters—for the lawyers, by and for whom the hunt is made.

still be seen in most instances, if not in every instance, that the offence admitted optionally of a considerable variety of punishments, of which no one could be made to appear to be strictly and evidently necessary, to the exclusion of the rest.

As a mere *memento*, then, of what is fit to be attended to, a clause to this effect may be very well; but as an instruction, calculated to point out in what manner what is so fit to be attended to may be accomplished, nothing can be more trifling or uninstructive: — it is even erroneous and fallacious, since it assumes, and that by necessary implication, that it is possible, in the case of every offence, to find a punishment of which the strict necessity is capable of being made evident,—which is not true. Unfortunately, the existence of a system of punishments of which the absolute necessity is capable of being made evident, with reference to the offences to which they are respectively annexed, is not altogether so clear as the existence of the article by which succeeding legislators are sent in quest of such a system by these their masters and preceptors. One thing is but too evident, that the attention bestowed by the penner of this article, on the subject on which he gives the law to posterity so much at his ease, was anything but strict. It was the Utopia created by the small talk of Paris that was dancing before his eyes, and not the elementary parts of the subject-matter he was treating of — the list of possible punishments, confronted with the list of possible offences. He who writes these observations has bestowed a closer and more minute inquiry into the subject than anybody who has been before him — he has laid down a set of rules, by which, as he conceives, the disproportion but too generally prevalent between punishments and offences, may be reduced within bounds greatly more narrow than it occupies anywhere at present in any existing code of laws — and what he would undertake for is, not to make evident any such list of strictly necessary punishments, but the impossibility of its existence.

Sentence 2. No one can be punished but in virtue of a law established and promulgated before the commission of the offence, and applied in a legal manner.

This clause—if instead of the insurrection-inviting word *can*, the word *ought* had been employed, as in the preceding clause of this same article — would, as far as it goes, have been well enough. As it is, while on the one hand it not only tends to bring in the everlasting danger of insurrection, — on the other hand, it leaves a considerable part of the danger against which it is levelled, uncovered and unprovided against.

Numerous are the occasions on which sufferings as great as any that, being inflicted with a view to punishment, go under the denomination of punishment, may be inflicted without any such view. These cases a legislator who understood his business would have collected and given notice of, for the purpose of marking out the boundaries and confines of the instruction in question, and saving it from misapplication. Laying an embargo, for instance, is a species of confinement, and, were a man subjected to it with a view to punishment, might in many cases be a very severe punishment: yet if the providence of the legislator happen not to have provided a general law empowering the executive authority to lay an embargo in certain cases, the passing of a special law for that purpose, after the incident which calls for it has taken place, may be a very justifiable, and even necessary measure; for instance, to prevent intelligence from being communicated to a power watching the moment to commence hostilities, or to prevent articles of subsistence or instruments of defence, of which there is a deficiency in the country, from being carried out of it.

Banishment must, in a certain sense, be admitted to be equally penal, whether inflicted for the purpose of punishment, or only by way of precaution, — for the purpose of prevention, and without any view to punishment. Will it be said, that there is no case in which the supreme government of a country ought to be trusted with the power of removing out of it, not even for a time, any persons, not even foreigners, from whom it may see reason to apprehend enterprises injurious to its peace? So in the case of imprisonment, which, though in some instances it may be a severer, may in others be a less severe infliction than banishment. Even death, a suffering which, if inflicted with a view to punishment, is the very extremity of punishment, and which, according to my own conception of the matter, neither need nor ought to be inflicted in any instance for the purpose of punishment, may, in some certain instances perhaps, be highly necessary to be inflicted without any view to punishment — for example, to prevent the diffusion of the plague.

Thus it is, that while the clause passing censure on *ex post facto* penal laws (a censure in itself, and, while it confines itself to the cases strictly within its declared subject, so highly reasonable) is thus exhibited with the insurrection-inciting *can* in it, and without the explanations necessary, as we have seen, to guard it against misapplication, the country is exposed to two opposite dangers: one, that an infliction necessary for the purpose of prevention should be resisted and risen up against by individuals, under the notion of its being included in the prohibition given by this clause; the other, that the measure, how necessary soever, should be abstained

from by the legislature through apprehension of such resistance.

As to the concluding epithet, *and legally applied*, it might have been spared without any great injury to the sense. If the law referred to in justification of an act of power have not been legally applied in the exercise of that act of power, the act has not been exercised in virtue of that law.

Article IX.

Every individual being presumed innocent until he have been declared guilty, — if it be judged necessary to arrest him, every act of rigour which is not necessary to the making sure of his person, ought to be severely inhibited by the law.

This article being free from the insurrection-exciting particle, and confining itself to the office of simple instruction, is so far innocent: the object of it is laudable, though the purport of it might have been expressed with more precision.

The maxim it opens with, though of the most consummate triviality, is not the more conformable to reason and utility, and is particularly repugnant to the regulation in support and justification of which it is adduced. That every man *ought* to be presumed innocent (for "is presumed innocent" is nonsense,) until he have been *declared* (that is, adjudged) guilty, is very well so long as no accusation has been preferred against him, — or rather, so long as neither that nor any other circumstance appears to afford reason for suspecting the contrary — but very irrational, after that ground for supposing he may have been guilty has been brought to light.

The maxim is particularly misapplied and absurd when applied to the case where it has been judged proper (on sufficient grounds we are to suppose) to put him under arrest, to deprive him of his power of locomotion. Suppose him innocent, and the defalcation made from his liberty is injurious and unwarrantable. The plain truth of the matter is, that the only rational ground for empowering a man to be arrested in such a case, is its not being yet known whether he be innocent or guilty: suppose him guilty, he ought to be punished — suppose him innocent, he ought not to be touched. But plain unsophisticated truth and common sense do not answer the purpose of poetry or rhetoric; and it is from poetry and rhetoric that these tutors of mankind and governors of futurity take their law. A clap from the galleries is their object, not the welfare of the state.

As for the expression, *ought to be severely repressed* (by punishment I suppose,) it is as well calculated to inflame (the general purpose of this effusion of matchless wisdom) as it is ill calculated to instruct. A rather more simple and instructive way of stating it would have been to say, in relation to every such exercise of rigour which goes beyond what appears necessary to the purpose in question — that of making sure of the person, that not coming within the ground of justification taken from that source, it remains upon the footing of an offence of that description of delinquency, whatever it be, of an injury of the species in question, whatever it may be. The satisfaction and punishment annexed to it will come of course to be of the same nature and extent as for an injury of the same nature and extent having no such circumstance to give occasion to it. Should the punishment in such case be greater or less than the punishment for the same injury would be if altogether divested of the justification which covers the remainder of the unpleasant treatment? Should the punishment of the minister of justice exceeding his authority, be greater or less than that of the uncommissioned individual doing the same mischief without any authority? On some accounts (as would be found upon proper inquiry,) it should be greater: on other accounts, not so great. But these are points of minute detail, which might surely as well have been left to the determination of those who would have had time to give them due examination, as determined upon at random by those who had no such time. The words of this article seem to intimate, that the punishment for the abuse of power by the minister of justice ought to be the greater of the two. But why so? You know better where to meet with the minister of justice than with an offending individual taken at large: — the officer has more to lose than the individual: — and the greater the assurance you have that a delinquent, in case of accusation, will be forthcoming, in readiness to afford satisfaction in the event of his being sentenced to afford it, the less the alarm which his delinquency inspires.

Article X.

No one ought to be molested [meaning, probably, by government] *for his opinions, even in matters of religion, provided that the manisfestation of them does not disturb* [better expressed perhaps by saying, except in as far as the manifestation of them disturb, or rather tends to the disturbance of] *the public order established by the law.*

Liberty of publication with regard to opinions, under certain exceptions, is a liberty which it would be highly proper and fit to establish, but which would receive but a very precarious establishment from an article thus worded. Disturb the public order? — what does that mean? Louis XIV. need not have hesitated about receiving an article thus worded into his code. The public order of things in this behalf, was an order in

virtue of which the exercise of every religion but the Catholic, according to his edition of it, was proscribed. A law is enacted, forbidding men to express a particular opinion, or set of opinions, relative to a particular point in religion: forbidding men to express any of those opinions, in the expression of which the Lutheran doctrine, for example, or the Calvinistic doctrine, or the Church of England doctrine consists: — in a prohibition to this effect, consists the public order established by the law. Spite of this, a man manifests an opinion of the number of those which thus stand prohibited as belonging to the religion thus proscribed. The act by which this opinion is manifested, is it not an act of disturbance with relation to the public order thus established? Extraordinary indeed must be the assurance of him who could take upon him to answer in the negative.

Thus nugatory, thus flimsy, is this buckler of rights and liberties, in one of the few instances in which any attempt is made to apply it to a good purpose.

What should it have done, then? To this question an answer is scarcely within the province of this paper: the proposition with which I set out is, not that the Declaration of Rights should have been worded differently, but that nothing under any such name, or with any such design, should have been attempted.

A word or two, however, may be given as a work of supererogation: — that opinions of all sorts might be manifested without fear of punishment; that no publication should be deemed to subject a man to punishment on account of any opinions it may be found to contain, considered as mere opinions; but at the same time, that the plea of manifesting religious opinions, or the practising certain acts supposed to be enjoined or recommended in virtue of certain religious opinions as proper or necessary to be practised, should not operate as a justification for either exercising, or prompting men to exercise, any act which the legislature, without any view or reference to religion, has already thought fit, or may hereafter think fit, to insert into the catalogue of prohibited acts or offences.

To instance two species of delinquency, — one of the most serious, the other of the slightest nature — acts tending to the violent subversion of the government by force — acts tending to the obstruction of the passage in the streets: — An opinion that has been supposed by some to belong to the Christian religion, is, that every form of government but the monarchical is unlawful: an opinion that has been supposed by some to belong to the Christian religion — by some at least of those that adhere to that branch of the Christian religion which is termed the Roman Catholic — is, that it is a duty, or at least a merit, to join in processions of a certain description, to be performed on certain occasions.

What, then, is the true sense of the clause in question, in relation to these two cases? What ought to be the conduct of a government that is neither monarchical nor Catholic, with reference to the respective manifestation of these two opinions?

First, as to the opinion relative to the unlawfulness of a government not monarchical. The falsity or erroneousness which the members of such a government could not but attribute in their own minds to such an opinion, is a consideration which, according to the spirit and intent of the provision in question, would not be sufficient to authorize their using penal or other coercive measures for the purpose of preventing the manifestation of them. At the same time, should such manifestation either have already had the effect of engaging individuals in any attempt to effect a violent subversion of the government by force, or appear to have produced a near probability of any such attempt — in such case, the engagement to permit the free manifestation of opinions in general, and of religious opinions in particular, is not to be understood to preclude the government from restraining the manifestation of the opinion in question, in every such way as it may deem likely to promote or facilitate any such attempt.

Again, as to the opinion relative to the meritoriousness of certain processions. By the principal part of the provision, government stands precluded from prohibiting publications manifesting an opinion in favour of the obligatoriness or meritoriousness of such processions. By the spirit of the same engagement, they stand precluded from prohibiting the performance of such processions, unless a persuasion of a political inconvenience as resulting from such practice — a persuasion not grounded on any notions of their unlawfulness in a religious view—should come to be entertained: as if, for example, the multitude of the persons joining in the procession, or the crowd of persons flocking to observe them, should fill up the streets to such a degree, or for such a length of time, and at intervals recurring with such frequency, as to be productive of such a degree of obstruction to the free use of the streets for the purposes of business, as in the eye of government should constitute a body of inconvenience worth encountering by a prohibitive law.

It would be a violation of the spirit of this part of the engagement, if the government, — not by reason of any view it entertained of the political inconveniences of these processions (for example, as above,) but for the purpose of giving an ascendency to religious opinions of an opposite nature (determined, for example, by a Protestant antipathy to Catholic processions) — were to make use of

the real or pretended obstruction to the free use of the streets, as a pretence for prohibiting such processions.

These examples, while they serve to illustrate the ground and degree and limits of the liberty which it may seem proper, on the score of public tranquillity and peace, to leave to the manifestation of opinions of a religious nature, may serve, at the same time, to render apparent the absurdity and perilousness of every attempt on the part of the government for the time being, to tie up the hands of succeeding governments in relation to this or any other spot in the field of legislation. Observe how nice, and incapable of being described beforehand by any particular marks, are the lines which mark the limits of right and wrong in this behalf — which separate the useful from the pernicious — the prudent course from the imprudent! — how dependent upon the temper of the times — upon the events and circumstances of the day! — with how fatal a certainty persecution and tyranny on the one hand, or revolt and civil war on the other, may follow from the slightest deviation from propriety in the drawing of such lines! — and what a curse to any country a legislator may be, who, with the purest intentions, should set about settling the business to all eternity by inflexible and adamantine rules, drawn from the sacred and inviolable and imprescriptible rights of man, and the primeval and everlasting laws of nature!

I give the preference, for the purpose of exemplification, to one of those points of all others, in relation to which it would give me pleasure to see liberty established for ever, as it could be established consistently with security and peace. My persuasion is, that there is not a single point with relation to which it can answer any good purpose to attempt to tie the hands of future legislators; and so, that as there is not a single point, not even of my own choosing, in relation to which I would endeavour to give any such perpetuity to a regulation even of my own framing, it is still less to say — strong as it may appear to say — that were it to depend upon me, I would sooner, were the power of sanctioning in my hands, give my sanction to a body of laws framed by any one else, how bad soever it might appear to me, free from any such perpetuating clause, than a body of laws of my own framing, how well soever I might be satisfied with it, if it must be incumbered with such a clause.

ARTICLE XI.

The free examination of thoughts and opinions is one of the most precious rights of man: every citizen may therefore speak, write, and print freely, provided always that he shall be answerable for the abuse of that liberty in the cases determined by the law.

The logic of this composition is altogether of a piece with its policy. When you meet with a *therefore* — when you meet with a consequence announced as drawn from the proposition immediately preceding it, assure yourself that, whether the propositions themselves, as propositions, are true or false — as ordinances, reasonable or unreasonable, expedient or inexpedient — that the consequent is either in contradiction with the antecedent, or has nothing at all to do with it.

The liberty of communicating opinions is one branch of liberty; and liberty is one of the four natural rights of man, over which human ordinances have no power. There are two ways in which liberty may be violated: by physical or bodily coercion, and by moral coercion or demonstration of punishment; — the one applied before the time for exercising the liberty — the other to be applied after it, in the shape of punishment, in the event of its not producing its intended effect in the shape of prohibition.

What is the boon in favour of the branch of liberty here in question, granted by this article? It saves it from succeeding legislators in one shape — it leaves it at their mercy in the other. Will it be said, that what it leaves exposed to punishment is only the abuse of liberty? Be it so. What then? Is there less of liberty in the abuse of liberty than in the use of it? Does a man exercise less liberty when he makes use of the property of another, than when he confines himself to his own? Then are liberty and confinement the same thing — synonymous and interchangeable terms.

What is the abuse of liberty? It is that exercise of liberty, be it what it may, which a man who bestows that name on it does not approve of. Every abuse of this branch of liberty is left exposed to punishment; and it is left to future legislators to determine what shall be regarded as an abuse of it. What is the security worth, which is thus given to the individual as against the encroachments of government? What does the barrier pretended to be set up against government amount to? It is a barrier which government is expressly called upon to set up where it pleases. Let me not be mistaken: — what I blame these constitution-makers for, is, not the having omitted to tie the hands of their successors tight enough, but the suffering themselves to entertain a conceit so mischievous and so foolish as that of tying them up at all; and in particular for supposing, that were they weak enough to suffer themselves to be so shackled, a phrase or two of so loose a texture could be capable of doing the business to any purpose.

The general notion in regard to offences — a notion so general as to have become proverbial, and even trivial — is, that *prevention*

is better than punishment. Here prevention is abjured, and punishment embraced in preference. Once more, let me not be mistaken. In the particular case of the liberty of communicating opinions, there most certainly are reasons, for giving up the object of prevention, and in the choice of the means of repression, confining the repressive operations of the legislator to the application of punishment, which do not apply to other offences. A word or two to this purpose, and to justify the seeming inconsistency, would have been rather more instructive than most of those other instructions of which the authors of this code have been so liberal.

Not only is the consequent of these two propositions, clogged with the proviso at the tail of it, repugnant to the antecedent, but in itself it is much more extensive — it extends a vast way beyond what is intended as a covering for it. The free communication, of thoughts, and of opinions, I presume are here put as synonymous terms: the free communication of opinions, says the antecedent, is one of the most valuable of the rights of man — of those unalienable rights of man. What says the consequent of it? Not only that a man may communicate opinions without the possibility of being prevented, but that he is to be at liberty to communicate what he will, without the possibility of being prevented, and in any manner, — false allegations in matters of fact, and known to be such—for true, false allegations to the prejudice of the reputation of individuals — in a word, slander of all sorts — and that in all manner of ways, — by speech, by writing, and even in the way of printing, without the possibility of stopping his mouth, destroying his manuscript, or stopping the press.

What then? Does it follow, that because a man ought to be left at liberty to publish opinions of all sorts, subject not to previous prevention, but only to subsequent punishment, that therefore he ought to be left at equal liberty to publish allegations of all sorts, false as well as true — allegations known by him to be false, as well as allegations believed by him to be true — attacks which he knows to be false, upon the reputation of individuals, as well as those which he believes to be true? Far is it from my meaning to contend in this place, especially in a parenthesis, much more to take for granted, that the endurance of even these mischiefs, crying as they are, may not be a less evil than the subjecting the press to a previous censure, under any such restrictions on the exercise of that power as could be devised — at any rate, under any such as have ever hitherto been proposed. All I mean to say is, that whether a man ought or ought not to be left at liberty to publish private slander without the application of anything but subsequent punishment to stop the progress of it, it does not follow that it ought to be left in his power to publish such allegations, because it ought to be left in like manner in his power to publish whatever can come under the denomination of opinions. As for the word thoughts, which is put in a line with the word opinions, as if thoughts were something different from opinions, I shall lay it out of the question altogether, till I can find somebody who will undertake to satisfy me, in the first place, that it was meant to denote something in addition to opinions, and in the next place, that that something was meant to include allegations, true and false, in relation to matters of fact.

Is it, or is it not, a matter to be wished, in France for example, that measures were taken by competent authority—whatever authority be deemed competent, to draw the line between the protection due to the useful liberty, and the restraint proper for the pernicious licence of the press? What a precious task would the legislator find set for him by this declaration of sacred, inviolable, and imprescriptible rights! The protectors of reputation on one side of him: the idolators of liberty on the other: each with the rights of man in his mouth, and the dagger of assassination in his hand, ready to punish the smallest departure from the course marked out in his heated imagination for this unbending line.

ARTICLE XII.

The guarantee of the rights of the man and of the citizen necessitates a public force: this force is therefore instituted for the advantage of all, and not for the particular utility [advantage] *of those to whom it is intrusted.*

The general purpose of the whole performance taken together, being mischievous and pestilential, this article has thus much to recommend it, that it is nothing to the purpose — no declaration of inviolable rights — no invitation to insurrection. As it stands, it is a mere effusion of imbecility — a specimen of confused conception and false reasoning. With a little alteration, it might be improved into a common-place memento, as stale, and consequently as useless, as it is unexceptionable: to wit, that the employment given to the public force, maintained as it is at the expense of the public, ought to have for its object the general advantage of the whole body of the public taken together, not the exclusive private advantage of particular individuals.

This article is composed of two distinct propositions. In the first, after throwing out of it as so much surplusage, the obscure part about the guarantee or maintenance of the rights of the man and the citizen, there will remain a clear and intelligible part, a declaration of opinion asserting the necessity of a public force: to this, hooked on in the shape

of an inference, of a logical conclusion, a vague assertion of an historical matter of fact, which may have been true in one place, and false in another — the truth of which is incapable of being ascertained in any instance — an operation, the labour of which may be spared with the less loss, from its being nothing to the purpose.

This matter of fact is neither more nor less than the main end in view which happened to be present in the minds of the several persons to whose co-operation the public force was respectively indebted for its institution and establishment in the several political communities in the world, and which officiated in the character of a final cause in every such instance. This final cause, the penner of the article — such is his candour and good opinion of mankind — pronounces without hesitation or exception to have been the pure view of the greatest good of the whole community — public spirit in its purest form, and in its most extensive application. Neither Clovis, Pepin, nor Hugh Capet, had the smallest preferable regard to the particular advantage of themselves or their favourites, when they laid the foundations of the public force in France, nor any other consideration in view than what might be most conducive to the joint and equal advantage of the Franks, Gauls, and Gallo-Romans upon the whole. As little partiality existed in the breast of William the Conqueror, in favour of himself, or any of his Normans, on the occasion of his sharing out England among those Normans, and dividing it into knight's fees: freemen and villains, barons and yeomen, Normans, Danes, and English, collectively and individually, occupying one equal place in his affections, and engaging one equal portion of his solicitude.

According to this construction, the inference, it must be confessed, may be just enough. All you have to suppose is, that the greatest good of the whole community taken together was in every instance the ruling object of consideration in the breast of the institutors of the public force: the pursuit of that greatest good, in a certain shape not perfectly explained, being the ruling object with these worthy men. As they did institute this public force, it seems to follow pretty accurately that the attainment of that general advantage was the end in view, in each instance, of its being instituted.

Should the two propositions, the antecedent and the consequent, in this their genuine signification, appear too silly to be endurable, the way to defend it may be to acknowledge that the man who penned it knew no difference between a declaration of what he supposed was or is the state of things with regard to this or that subject, and a declaration of what he conceived ought to have been, or ought to be that state of things; and this being the case, it may be supposed that in saying such was the end in view upon the several occasions in question, what he meant was, that such it ought to have been. If this were really his meaning, the propositions are such, both of them, as we may venture to accede to without much danger. A public force is necessary, we may say; and the public is the party for whose advantage that force ought to be employed. The propositions themselves are both of them such, that against neither of them, surely, can any objection be produced: as to the inference by which they are strung together, if the application made of it be not exactly of the clearest nature, you have only to throw it out, and everything is as it should be, and the whole article is rendered unexceptionable.

ARTICLE XIII.

For the maintenance of the public force, and for the expenses of administration, a common contribution is indispensable: it ought to be equally divided among all the citizens in proportion to their faculties.

In the first part of this article two propositions are contained. One is, that a common contribution is indispensable for the maintenance of the public force. If by this be meant, that raising money upon all, for the maintenance of those whose individual forces are employed in the composition of the public force, is proper, I see no reason to dispute it: if the meaning be, that this is the only possible way of maintaining a public force, it is not true. Under the feudal system, those whose individual forces composed the public force, were maintained, not at the expense of the community at large, but at their own expense.

The other proposition is, that a common contribution is indispensable for the expenses (meaning the other expenses) of administration. Indispensable? Yes, certainly: so far as these other branches of administration cannot be carried on without expense — if they are carried on, the defraying of that expense is indispensable. But are these nameless branches of administration necessary? for if they are not, neither is a common contribution for the defraying of the expense. Are they then necessary? — these unnamed and unindicated branches of administration, which in this mysterious manner are put down on the list of necessary ones, is their title to be there a just one? This is a question to which it is impossible to find an answer: yet, till an answer be found for it, it is impossible to find a sufficient warrant for admitting this proposition to be true. From this proposition, as the matter stands upon the face of it, it should seem that one of these sacred and inviolable and imprescriptible rights of a man consists in the obligation of contributing to an unknown mass of expense employed upon objects not ascertained.

Proposition 3. It (the common contribution in question) ought to be equally divided amongst all the citizens, in proportion to their faculties.

Partly contradiction—a sequel to, or rather repetition of preceding contradictions: partly tyranny under the mask of justice.

By the first article, human creatures are, and are to be, all of them, on a footing of equality in respect to all sorts of rights. By the second article, property is of the number of these rights. By the two taken together, all men are and are to be upon an equal footing in respect of property: in other words, all the property in the nation is and is to be divided into equal portions. At the same time, as to the matter of fact, what is certain is, that at the time of passing this article, no such equality existed, nor were any measures so much as taken for bringing it into existence. This being the case, which of the two states of things is it that this article supposes?—the old and really existing inequality, or the new and imaginary equality? In the first case, the concluding or explanatory clause is in contradiction to the principal one: in the other case, it is tautological and superfluous. In the first case, the explanatory clause is in contradiction to the principal one; for, from unequal fortunes if you take equal contributions, the contributions are not proportional. If from a fortune of one hundred pounds you take a contribution of ten pounds, and from a fortune of two hundred pounds, ten pounds and no more, the proportion is not a tenth in both cases, but a tenth in the one, and only a twentieth in the other.

In the second case — that is, if equality in point of property be the state of things supposed—then, indeed, equality of contribution will be consistent with the plan of equalization, as well as consonant to justice and utility; but then the explanatory clause, *in proportion to their faculties*, will be tautologous and superfluous, and not only tautologous and superfluous, but ambiguous and perplexing: for proportionality in point of contribution is not consistent with equality in point of contribution, on more than one out of an infinity of suppositions, viz. that of equality in point of fortune: nor, in point of fact, was the one consistent with the other in the only state of things which was in existence at the time.

Men's *faculties* too! What does that word mean? This, if the state of things represented as actually existing, as well as always having existed, and for ever about to exist, had been anything more than a sick man's dream, would have required to be determined, had it been at all a matter of concern to prevent men from cutting one another's throats, and must have been determined before this theory could have been reduced to practice. In the valuation of men's faculties, is it meant that their possessions only, or that their respective wants and exigencies, as well as their ways and means, should be taken into account? In the latter case, what endless labour! in the former case, what injustice!

In either case, what tyranny! An inquisition into every man's exigencies and means, — an inquisition which, to be commensurate to its object, must be perpetual, — an inquisition into every man's circumstances, one of the foundation stones in this plan of liberty!

To a reader who should put an English construction upon this plan of taxation — (masked by the delusive term contribution, as if voluntary contributions could be a practicable substitute for compulsory,) — to a reader who should collect from the state of things in England the construction to be put upon this plan of taxation, the system here in view would not show itself in half its blackness. To an English reader it might naturally enough appear, that all that was meant was, that the weight of taxation should bear in a loose sense as equally, or rather as equitably — that is, as proportionably, as it could conveniently be made to do; — that taxes, a word which would lead him directly and almost exclusively to taxes upon consumption, should be imposed — for example, upon superfluities in preference to the necessaries of life. Wide indeed would be his mistake. What he little would suspect is, that taxes on consumption, the only taxes from which arise the contributions that in plain truth, and not in a sophistical sense, are voluntary on the part of the contributor, are carefully weeded out of the book of French finance. Deluded by the term *indirect*, imposed as a sort of term of proscriptiom upon them by a set of muddy-headed metaphysicians — little does he think that the favourite species of taxation in that country of perfect liberty, is a species of imposition and inquisition, which converts every man who has any property into a criminal in the first instance, which sends the tax-gatherer into every nook and corner of a man's house, which examines every man upon interrogatories, and of which a double or treble tithe would be an improved and mollified modification.

ARTICLE XIV.

All the citizens have the right to ascertain by themselves, or by their representatives, the necessity of the public contribution — to give their free consent to it — to follow up the application of it, and to determine the quantity of it, the objects on which it shall be levied, the mode of levying it and getting it in, and the duration of it.

Supposing the author of this article an enemy to the state, and his object to disturb

the course of public business, and set the individual members of the state together by the ears, nothing could have been more artfully or more happily adapted to the purpose. Supposing him a friend, and his object to administer either useful instruction or salutary controul, nothing more silly or childish can be imagined.

In the first place, who is spoken of—who are meant, by all the citizens? Does it mean all, collectively acting in a body, or every citizen, every individual, that is, any one that pleases? This right of mine, — is it a right which I may exercise by myself at any time whenever it happens to suit me, and without the concurrence of anybody else, or which I can only exercise if and when I can get everybody else, or at least the major part of everybody else, to join me in the exercise of it? The difference in a practical view is enormous; but the penners of this declaration, by whom terms expressive of aggregation, and terms expressive of separation, are used to all appearance promiscuously, show no symptoms of their being aware of the smallest difference. If in conjunction with everybody else, I have it already by the sixth article. Laws imposing contributions are laws: I have already, then, a right of concurring in the formation of all laws whatever: what do I get by acquiring the right of concurring in the formation of the particular class of laws which are employed in imposing contributions? As a specification, as an application of the general provision to the particular subject, it might be very well. But it is not given as a specification, but as a distinct article. What marks the distinction the more forcibly, is the jumbling in this instance, and in this instance only, acts of another nature with acts of legislation — the right of examining into the necessity of the operation, and of following up such examination with the right of performing the operation — the right of observing and commenting on the manner in which the powers of government are exercised, with the right of exercising them.

Make what you will of it, what a pretty contrivance for settling matters, and putting an end to doubts and disagreements! This, whatever it is, is one of the things which I am told I have a right to do, that is, either by myself, or by certain persons alluded to under the denomination of my representatives, —either in one way or the other; but in which? This is exactly what I want to know, and this is exactly what I am not told. — Can I do it by myself, or only by my representatives; that is to say, in the latter case by a deputy in whose election I have perhaps had a vote, perhaps not — perhaps given the vote, perhaps not — perhaps voted for, perhaps voted against; and who, whether I voted for or against him, will not do either this, or any one other act whatsoever, at my desire? Have I, an individual — have I in my individual capacity — a right when I please, to ascertain, that is, to examine into the necessity of every contribution established or proposed to be established? Then have I a right to go whenever I please, to any of the officers in the department of the revenue; — to take all the people I find under my command, — to put all the business of the office to a stand, — to make them answer all my questions, — to make them furnish me with as many papers or other documents as I desire to have? — You, my next neighbour, who are as much a citizen as I am, have as much of this right as I have. It is your pleasure to take this office under your command, to the same purpose at the same time. It is my pleasure the people should do what I bid them, and not what you bid them; it is your pleasure they should do what you bid them, and not what I bid them: — which of us is to have his pleasure? The answer is, — he who has the strongest lungs, or if that will not do, he who has the strongest hand. To give everything to the strongest hand is the natural result of all the tutoring, and all the checking and controuling of which this lecture on the principles of government is so liberal: but this is the exact result of that state of things which would have place, supposing there were no government at all, nor any such attempt as this to destroy it, under the notion of directing it.

The right of giving consent to a tax, — the right of giving consent to a measure, — is a curious mode of expression for signifying assent or dissent as a man thinks proper! It is surprising that a man professing and pretending to fix words — to fix ideas — to fix laws—to fix everything — and to fix them to all eternity, should fix upon such an expression, and should say the right of giving consent, instead of the right of giving a vote— the right of giving consent, and consent only, instead of the right of giving consent or dissent, or neither, as a man thinks proper.

Article XV.

Society has a right to demand from every agent of the public, an account of his administration.

Society? What is the meaning—what is the object here? Different, where it ought to be identical — identical, where it ought to be different— ever inexplicit— ever indeterminate, using as interconvertible, expressions which, for the purpose of precision and right understanding, require the most carefully to be set and kept in opposition: such is the language from the beginning of this composition to the end!

Is it, that superiors in office have a right to demand such an account of their sub-

nates? Not to possess such a right, would be not to be a superior: — not to be subject to the exercise of it, would be not to be a subordinate. In this sense, the proposition is perfectly harmless, but equally nugatory. Is it, that all men not in office have this right with respect to all men, or every man in office? Then comes the question as before — each in his individual capacity, or only altogether in their collective? If in their collective, whatever this article, or any other article drawn up in the same view, does or can do for them, amounts to nothing: whatever it would have them do, it gives them no facilities for doing it, which they did not possess without it. Whatever it would have them do, if one and all rise for the purpose of doing it, bating what hindrance they may receive from one another, there will be nobody to hinder them. But is there any great likelihood of any such rising ever taking place? and if it were to take place, would there be any great use in it?

If the right be of the number of those which belongs to each and every man in his individual capacity, then comes the old story over again of mutual obstruction, and the obstruction of all business, as before.

The right of demanding an account? What means that, too? The right of simply putting the question, or the right of compelling an answer to it — and such an answer as shall afford to him that puts it, the satisfaction he desires? In the former case, the value of the right will not be great; in the latter case, he who has it, and who, by the supposition, is not in office, will in fact be in office; and, as everybody has it, and is to have it, the result is, that everybody is in office; and those who command all men are under the command of every man.

Instead of meaning stark nonsense, was the article meant after all simply to convey a memento to those who are superiors in office, to keep a good look-out after their subordinates? If this be the case, nothing can be more innocent and unexceptionable. Neither the child that is learning wisdom in his horn-book, nor the old woman who is teaching him, need blush to own it. But what has it to do in a composition, the work of the collected wisdom of the nation, and of which the object is, throughout and exclusively, to *declare rights?*

Silly or pestilential — such, as usual, is here the alternative. In the shape of advice, a proposition may be instructive or trifling, wholesome or insipid. But be it the one or the other, the instant it is converted, or attempted to be converted, into a law, of which those called legislators are to be the objects, and those not called legislators to be the executors, it becomes all sheer poison, and of the rankest kind.

ARTICLE XVI.

Every society in which the warranty of rights is not assured, ["*la garantie des droits n'est pas assurée,*"] *nor the separation of powers determined, has no constitution.*

Here we have an exhibition: self-conceit inflamed to insanity — legislators turned into turkey-cocks — the less important operation of constitution-making, interrupted for the more important operation of bragging. Had the whole human species, according to the wish of the tyrant, but one neck, it would find in this article a sword designed to sever it.

This constitution, — the blessed constitution, of which this matchless declaration forms the base — the constitution of France — is not only the most admirable constitution in the world, but the only one. That no other country but France has the happiness of possessing the sort of thing, whatever it be, called a constitution, is a meaning sufficiently conveyed. This meaning the article must have, if it have any: for other meaning, most assuredly it has none.

Every society in which the warranty of rights is not assured (*toute société dans laquelle la garantie des droits n'est pas assurée,*) is, it must be confessed, most rueful nonsense; but if the translation were not exact, it would be unfaithful: and if not nonsensical, it would not be exact.

Do you ask, has the nation I belong to such a thing as a constitution belonging to it? If you want to know, look whether a declaration of rights, word for word the same as this, forms part of its code of laws; for by this article, what is meant to be insinuated, not expressed (since by nonsense nothing is expressed,) is the necessity of having a declaration of rights like this set by authority in the character of an introduction at the head of the collection of its laws.

As to the not absolutely nonsensical, but only very obscure clause, about a society's having "the separation of powers determined," it seems to be the result of a confused idea of an intended application of the old maxim, *Divide et impera:* the governed are to have the governors under their governance, by having them divided among themselves. A still older maxim, and supposing both maxims applied to this one subject, I am inclined to think a truer one, is, that a house divided against itself cannot stand.

Yet on the existence of two perfectly independent and fighting sovereignties, or of three such fighting sovereignties (the supposed state of things in Britain seems here to be the example in view,) the perfection of good government, or at least of whatever approach to good government can subsist without the actual adoption *in terminis* of a declaration of rights such as this, is supposed to

depend. Hence, though Britain have no such thing as a constitution belonging to it at present, yet, if during a period of any length, five or ten years for example, it should ever happen that neither House of Commons nor House of Lords had any confidence in the King's Ministers, nor any disposition to endure their taking the lead in legislation (the House of Commons being all the while, as we must suppose, peopled by universal suffrage,) possibly in such case, for it were a great deal too much to affirm, Britain might be so far humoured as to be allowed to suppose herself in possession of a sort of thing, which, though of inferior stuff, might pass under the name of a constitution, even without having this declaration of rights to stand at its head.

That Britain possesses at present anything that can bear that name, has by Citizen Paine, *following*, or *leading* (I really remember not, nor is it worth remembering,) at any rate *agreeing* with this declaration of rights, been formally denied.

According to general import, supported by etymology, by the word *constitution*, something *established*, something *already* established, something possessed of *stability*, something that has given *proofs* of stability, seems to be implied. What shall we say, if of this most magnificent of all boasts, not merely the simple negative, but the direct converse should be true? and if instead of France being the only country which has a constitution, France should be the only country that has none! Yet if government depend upon obedience — the stability of government upon the permanence of the disposition to obedience, and the permanence of that disposition upon the duration of the habit of obedience — this most assuredly must be the case.

ARTICLE XVII.

Property being an inviolable and sacred right, no one can be deprived of it, unless it be when public necessity, legally established, evidently requires it [i. e. *the sacrifice of it,*] *and under the condition of a just and previous indemnity.*

Here we have the concluding article in this pile of contradictions; it does not mismatch the rest. By the first article, all men are equal in respect of all sorts of rights, and so are to continue for evermore, spite of everything which can be done by laws. By the second article, property is of the number of those rights. By this seventeenth and last article, no man can be deprived of his property — no, not of a single atom of it, without an equal equivalent paid — not when the occasion calls for it, for that would not be soon enough, but beforehand: all men are equal in respect of property, while John has £50,000 a-year, and Peter nothing: all men are to be equal in property, and that for everlasting; at the same time that he who has a thousand times as much as a thousand others put together, is not to be deprived of a single farthing of it, without having first received an exact equivalent.

Nonsense and contradiction apart, the topic touched upon here is one of those questions of detail that requires to be settled, and is capable of being settled, by considerations of utility deducible from quiet and sober investigation, to the satisfaction of sober-minded men; but such considerations are far beneath the attention of these creators of the rights of man.

There are distinctions between species of property which are susceptible, and species of property which are not susceptible, of the *value of affection;* between losses in relation to which the adequacy of indemnification may be reduced to a certainty, and losses in respect of which it must remain exposed to doubt: there may be cases in which a more than equivalent gain to one individual will warrant the subjecting another individual, with or without compensation, to a loss. All these questions are capable of receiving a solution to the satisfaction of a man who thinks it worth his while to be at the pains of comparing the feelings on one side with the feelings on the other, and to judge of regulations by their effect on the feelings of those whom they concern, instead of pronouncing on them by the random application of declamatory epithets and phrases.

Necessity? What means necessity? Does necessity order the making of new streets, new roads, new bridges, new canals? A nation which has existed for so many ages with the stock of water-roads which it received from Nature, — is any addition to that stock *necessary* to the continuation of its existence? If not, there is an end to all improvement in all these lines. In all changes there are disadvantages on one side, there are advantages on the other: but what are all the advantages in the world, when set against the *sacred* and inviolable rights of man derived from the unenacted and unrepealable laws of Nature?

CONCLUSION.

On the subject of the fundamental principles of government, we have seen what execrable trash the choicest talents of the French nation have produced.

On the subject of chemistry, Europe has beheld with admiration, and adopted with unanimity and gratitude, the systematic views of the same nation, supported as they were by a series of decisive experiments and conclusive reasonings.

Chemistry has commonly been reckoned, and not altogether without reason, among the most abstruse branches of science

chemistry, we see how high they have soared above the sublimest knowledge of past times; in legislation, how deep they have sunk below the profoundest ignorance: — how much inferior has the maturest design that could be furnished by the united powers of the whole nation proved, in comparison of the wisdom and felicity of the chance-medley of the British Constitution.

Comparatively speaking, a select few applied themselves to the cultivation of chemistry — almost an infinity, in comparison, have applied themselves to the science of legislation.

In the instance of chemistry, the study is acknowledged to come within the province of science: the science is acknowledged to be an abstruse and difficult one, and to require a long course of study on the part of those who have had the previous advantage of a liberal education; whilst the cultivation of it, in such manner as to make improvements in it, requires that a man should make it the great business of his life; and those who have made these improvements have thus applied themselves.

In chemistry there is no room for passion to step in and to confound the understanding — to lead men into error, and to shut their eyes against knowledge: in legislation, the circumstances are opposite, and vastly different.

What, then, shall we say of that system of government, of which the professed object is to call upon the untaught and unlettered multitude (whose existence depends upon their devoting their whole time to the acquisition of the means of supporting it,) to occupy themselves without ceasing upon all questions of government (legislation and administration included) without exception — important and trivial, — the most general and the most particular, but more especially upon the most important and most general — that is, in other words, the most scientific — those that require the greatest measures of science to qualify a man for deciding upon, and in respect of which any want of science and skill are liable to be attended with the most fatal consequences?

What should we have said, if, with a view of collecting the surest grounds for the decision of any of the great questions of chemistry, the French Academy of Sciences (if its members had remained unmurdered) had referred such questions to the Primary Assemblies?

If a collection of general propositions, put together with the design that seems to have given birth to this performance — propositions of the most general and extensive import, embracing the whole field of legislation — were capable of being so worded and put together as to be of use, it could only be on the condition of their being deduced in the way of abridgment from an already formed and existing assemblage of less general propositions, constituting the tenor of the body of the laws. But for these more general propositions to have been abstracted from that body of particular ones, that body must have been already in existence: the general and introductory part, though placed first, must have been constructed last; — though first in the order of communication, it should have been last in the order of composition. For the framing of the propositions which were to be included, time, knowledge, genius, temper, patience, everything was wanting. Yet the system of propositions which were to include them, it was determined to have at any rate. Of time, a small quantity indeed might be made to serve, upon the single and very simple condition of not bestowing a single thought upon the propositions which they were to include: and as to knowledge, genius, temper, and patience, the place of all these trivial requisites was abundantly supplied by effrontery and self-conceit. The business, instead of being performed in the way of abridgment, was performed in the way of anticipation — by a loose conjecture of what the particular propositions in question, were they to be found, might amount to.

What I mean to attack is, not the subject or citizen of this or that country — not this or that citizen — not citizen Sieyes or citizen anybody else, but all anti-legal rights of man, all declarations of such rights. What I mean to attack is, not the execution of such a design in this or that instance, but the design itself.

It is not that they have failed in their execution of the design by using the same word promiscuously in two or three senses — contradictory and incompatible senses — but in undertaking to execute a design which could not be executed at all without this abuse of words. Let a man distinguish the senses — let him allot, and allot invariably a separate word for each, and he will find it impossible to make up any such declaration at all, without running into such nonsense as must stop the hand even of the maddest of the mad.

Ex uno, disce omnes — from this declaration of rights, learn what all other declarations of rights — of rights asserted as against government in general, must ever be, — the rights of anarchy — the order of chaos.

It is right I should continue to possess the coat I have upon my back, and so on with regard to everything else I look upon as my property, at least till I choose to part with it.

It is right I should be at liberty to do as I please — it would be better if I might be permitted to add, whether other people were pleased with what it pleased me to do or not. But as that is hopeless, I must be content with such a portion of liberty, though it is

the least I can be content with, as consists in the liberty of doing as I please, subject to the exception of not doing harm to other people.

It is right I should be secure against all sorts of harm.

It is right I should be upon a par with everybody else—upon a par at least; and if I can contrive to get a peep over other people's heads, where will be the harm in it?

But if all this is right now, at what time was it ever otherwise? It is now naturally right, and at what future time will it be otherwise? It is then unalterably right for everlasting.

As it is right I should possess all these blessings, I have a right to all of them.

But if I have a right to the coat on my back, I have a right to knock any man down who attempts to take it from me.

For the same reason, if I have a right to be secure against all sorts of harm, I have a right to knock any man down who attempts to harm me.

For the same reason, if I have a right to do whatever I please, subject only to the exception of not doing harm to other people, it follows that, subject only to that exception, I have a right to knock any man down who attempts to prevent my doing anything that I please to do.

For the same reason, if I have a right to be upon a par with everybody else in every respect, it follows, that should any man take upon him to raise his house higher than mine, —rather than it should continue so, I have a right to pull it down about his ears, and to knock him down if he attempt to hinder me.

Thus easy, thus natural, under the guidance of the selfish and anti-social passions, thus insensible is the transition from the language of utility and peace to the language of mischief. Transition, did I say? — what transition?—from right to right? The propositions are identical — there is no transition in the case. Certainly, as far as words go, scarcely any: no more than if you were to trust your horse with a man for a week or so, and he were to return it blind and lame: — it was your horse you trusted to him — it is your horse you have received again: — what you had trusted to him, you have received.

It is in England, rather than in France, that the discovery of the *rights of man* ought naturally to have taken its rise: it is we — we English, that have the better *right* to it. It is in the English language that the transition is more natural, than perhaps in most others: at any rate, more so than in the French. It is in English, and not in French, that we may change the sense without changing the word, and, like Don Quixote on the enchanted horse, travel as far as the moon, and farther, without ever getting off the saddle. One and the same word, right — right, that most enchanting of words — is sufficient for operating the fascination. The word is ours,— that magic word, which, by its single unassisted powers, completes the fascination. In its adjective shape, it is as innocent as a dove: it breathes nothing but morality and peace. It is in this shape that, passing in at the heart, it gets possession of the understanding: — it then assumes its substantive shape, and joining itself to a band of suitable associates, sets up the banner of insurrection, anarchy, and lawless violence.

It is right that men should be as near upon a par with one another in every respect as they can be made, consistently with general security: here we have it in its adjective form, synonymous with desirable, proper, becoming, consonant to general utility, and the like. I have a right to put myself upon a par with everybody in every respect: here we have it in its *substantive* sense, forming with the other words a phrase equivalent to this, — wherever I find a man who will not let me put myself on a par with him in every respect, it is right, and proper, and becoming, that I should knock him down, if I have a mind to do so, and if that will not do, knock him on the head, and so forth.

The French language is fortunate enough not to possess this mischievous abundance. But a Frenchman will not be kept back from his purpose by a want of words: the want of an adjective composed of the same letters as the substantive *right*, is no loss to him. Is, has been, ought to be, shall be, can, — all are put for one another — all are pressed into the service—all made to answer the same purposes. By this inebriating compound, we have seen all the elements of the understanding confounded, every fibre of the heart inflamed, the lips prepared for every folly, and the hand for every crime.

Our right to this precious discovery, such as it is, of the rights of man, must, I repeat it, have been prior to that of the French. It has been seen how peculiarly rich we are in materials for making it. *Right*, the substantive *right*, is the child of law: from *real* laws come *real* rights; but from *imaginary* laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come *imaginary* rights, a bastard brood of monsters, "gorgons and chimæras dire." And thus it is, that from *legal rights*, the offspring of law, and friends of peace, come *anti-legal rights*, the mortal enemies of law, the subverters of government, and the assassins of security.

Will this antidote to French poisons have its effect? — will this preservative for the understanding and the heart against the fascination of sounds, find lips to take it? This, in point of speedy or immediate efficacy at least,

is almost too much to hope for. Alas! how dependent are opinions upon sound! Who shall break the chains which bind them together? By what force shall the associations between words and ideas be dissolved — associations coeval with the cradle — associations to which every book and every conversation give increased strength? By what authority shall this original vice in the structure of language be corrected? How shall a word which has taken root in the vitals of a language be expelled? By what means shall a word in continual use be deprived of half its signification? The language of plain strong sense is difficult to learn; the language of smooth nonsense is easy and familiar. The one requires a force of attention capable of stemming the tide of usage and example; the other requires nothing but to swim with it.

It is for education to do what can be done; and in education is, though unhappily the slowest, the surest as well as earliest resource. The recognition of the nothingness of the laws of nature and the rights of man that have been grounded on them, is a branch of knowledge of as much importance to an Englishman, though a negative one, as the most perfect acquaintance that can be formed with the existing laws of England.

It must be so: — Shakspeare, whose plays were filling English hearts with rapture, while the drama of France was not superior to that of Caffraria, — Shakspeare, who had a key to all the passions and all the stores of language, could never have let slip an instrument of delusion of such superior texture. No: it is not possible that the rights of man — the natural, pre-adamitical, ante-legal, and anti-legal rights of man — should have been unknown to, have been unemployed by Shakspeare. How could the Macbeths, the Jaffiers, the Iagos, do without them? They present a cloak for every conspiracy — they hold out a mask for every crime; — they are every villain's armoury — every spendthrift's treasury.

But if the English were the first to bring the rights of man into the closet from the stage, it is to the stage and the closet that they have confined them. It was reserved for France—for France in her days of degradation and degeneration — in those days, in comparison of which the worst of her days of fancied tyranny were halcyon ones — to turn debates into tragedies, and the senate into a stage.

The mask is now taken off, and the anarchist may be known by the language which he uses.

He will be found *asserting rights*, and acknowledging them at the same time not to be recognised by government. Using, instead of *ought* and *ought not*, the words *is* or *is not* — *can* or *can not*.

In former times, in the times of Grotius and Puffendorf, these expressions were little more than improprieties in language, prejudicial to the growth of knowledge: at present, since the French Declaration of Rights has adopted them, and the French Revolution displayed their import by a practical comment, — the use of them is already a *moral crime*, and not undeserving of being constituted a legal crime, as hostile to the public peace.

DECLARATION OF THE RIGHTS AND DUTIES

OF THE

MAN AND THE CITIZEN,

ANNO 1795.

RIGHTS. — ARTICLE I.

The rights of man in society are liberty, equality, security, and property.

Comparing this declaration with its predecessor, we may observe, that it opens with a specimen of legislative shuffling: on the one hand, a sense of the absurdity of its predecessor, and the mischief that had been the fruit of it: on the other hand, a determination not to acknowledge these things.

The sorts of rights which this second declaration, as well as the first, sets out with the intention of declaring, are of two sorts: those of the man, and those of the citizen: those which it immediately proceeds to declare are neither the one nor the other, but something between both, — *the Rights of Man in Society.*

The difference is not a mere affair of words. The rights declared by the first declaration, were declared to be natural, inalienable, and

imprescriptible — such rights, against which all laws that should at any time presume to strike, would become *ipso facto* void. If no distinction were to be recognised between the rights of the man and the rights of the citizen, one of the expressions must be acknowledged to be unmeaning, and the insertion of it a dangerous impertinence: if a distinction between them be to be recognised, it must be this, that the rights of the man — the rights of the man as existing in a state antecedent to that of political society — antecedent to the state of citizenship — are the only one of the sorts to which the character of inalienable and imprescriptible can be understood to belong: — those of the citizen, growing out of the laws by which the state of citizenship is constituted, are the produce of the law itself, and may be conceived to remain at the disposal of the law which gave them birth, and may continue to depend for their existence on the law from which they received it.

This second declaration, — leaving the doubt in its full force, whether there are or are not a certain description of rights over which laws have no power — a description of rights which, as we have seen, covers the whole field of legislation, shutting the door against everything that can present itself under the name of law? — consequently, whether such laws as they are about to create are or are not capable of possessing any binding force, — varnishes over the ambiguity by a subterfuge. Obliterating the distinction so carefully made, and so recently recognised between the man and the citizen, at the next step they produce, instead of the two, a sort of neutral double man, who is neither one nor the other, or else both in one.

Comparing the list of rights, whoever they belong to, whether to the man or the citizen, or the man in society, we shall find, that between the year 1791 and the year 1795, inalienable as they are, they have undergone a change. Indeed, for a set of inalienable rights they must be acknowledged to have been rather unstable. At the time of the passing the first article of the declaration of 1791, there were but two of them — liberty and equality. By the time the second article of that same declaration was framed, three new ones had started up in addition to liberty; viz. property, security, and resistance to oppression: total, four sorts of rights — not five; for in the same interval an accident had happened to equality, and somehow or other it was not to be found. In the interval between 1791 and 1795, it has been found again: accordingly, in the list of 1795, we may observe equality occupying a station elevated above everything but liberty, with security and property lying at its feet. Looking for resistance against oppression, we shall find it kicked out of doors; but, like the images of the two illustrious Romans mentioned by Tacitus, not the less regarded for not being seen. To account for this exclusion, we must recollect, that between 1791 and 1795 — in short, from the moment of his naturalization (for it was in America that he had his birth) Citizen Resistance-against-oppression had been playing strange tricks: he had been constantly flying in the face of the powers in being, whatever they were — he had rendered himself a perfect nuisance, and so great a nuisance, that it was high time for him to be sent to Coventry. Thither he has accordingly been sent, though ready to present himself at the call of patriotism, whenever a king is to be assassinated, or a riot to be kicked up. By the sagacity of the constitutionalist of 1795, he had been at length discovered to be a most dangerous enemy to security, after a four years' experience of his activity in that line. Two years before his naturalization in France, I had denounced him as such in a book* which found its way into the hands of Condorcet and others; but my denunciation was not heard.

As to the rest, the nonsensicalness and mischievousness of this article has been pointed out in the observations on the corresponding article of the declaration of 1791.

ARTICLE II.

Liberty consists in the power of doing that which hurts not the rights *of others.*

The same as the commencement of Article IV. in the Declaration of 1791, except as to the insertion of the words — *the rights.*

ARTICLE III.

Sentence 1. *Equality consists in this — that the law is the same for all, whether it protect or whether it punish.*

Sentence 2. *Equality admits not any distinction of births — any hereditary succession of powers.*

In article 6 of the Declaration of 1791, we saw this given in the character of a maxim; in which character the propriety of it has been discussed: the maxim is now turned into a definition of equality. This is equality, certainly, as far as it goes; but is it to be understood as stopping here, or is it to go any further, and how much further? These questions are not answered, apparently because the declaration-makers were afraid to answer them. Thus much is certain, there is nothing in this declaration of rights to stop it: therefore, on it must go in its own course; which course can never have found its end, till it has laid everything smack smooth, not leav-

* *Introduction to the Principles of Morals and Legislation*, first published 1789. See Vol. I. p. 154.

ing any one stone in the whole fabric of property upon another.*

That equality should leave no hereditary succession of powers, is natural and consistent enough. But how does it contrive to leave any powers at all? Where is the equality between him who has powers, and him who has none? The exclusion of the hereditary succession of powers excepted, it turns out, then, that people are not the more upon a par for the possession of this right; and that, in short, to speak correctly, equality and inequality are the same things.

No distinction of births — no distinction in point of birth? How is that managed? Are all the men in France born of the same father and mother? Will democratic omnipotence prevent the Montmorencies from being descended from a known line of ancestors, beginning under the Capets? or, I forget what other family, from a line beginning under Clovis? What they probably meant to say is, that no distinction in point of rights should be suffered to depend on any distinction in point of birth: but as epigrams are at least as necessary in a French book of legislation as laws, the paradoxical turn of expression was preferred, as being the most natural.

ARTICLE IV.

Security results from the concurrence of all in securing the rights of each.

An epigram upon security — a definition imitated from *le malade imaginaire*. The property which opium has of laying men to sleep, results from its soporific quality. Now, citizen, if you do not know what security is, you deserve to have your house knocked down about your ears.

Concurrence of all on one hand — rights of each on the other. From this antithesis we learn, that whatever security happens to be conferred by the exertions of any number less than all, is no security at all.

ARTICLE V.

Property is the right of enjoying and disposing of one's goods — of one's revenues — of the fruit of one's labour and one's industry.

Another definition in the soporific style, but perhaps not quite so innocent. Property is the right of enjoyment and disposal. Let a man, then, have ever so much of either right, yet if he have not the other, he has no property. It is perhaps owing to this definition of property, that what the *ci-devant* clergy of France had to live upon, was not their property, and consequently there was no harm in robbing them of it. In England, tenant for life of a settled estate conceives himself to be a man of property: this article informs him that he knows nothing about the matter. In England, a woman who has an advowson, conceives the advowson to be her property: let her consult these French legislators, they will tell her it is no such thing, since she cannot give herself the living.

Let us pass on to the Declaration of the Duties of Man.

Right being one of the fruits of law, and duty another, it occurred to the second set of constitution-makers, that a *declaration of rights* would be but a *lop-sided job*, without a *declaration of duties* to match it on the other side. The first declaration of rights having driven the people mad, a declaration of duties, it was hoped, might help to bring them to their senses. Whatever were their notions about the matter, thus much must be admitted to be true, that if poison *must* be taken, an antidote may have its use; but what would be still better would be, to throw both together, poison and antidote, into the fire. Every medicine that is good for anything, say the physicians, is a poison. The political medicine we have now to analyze, forms no exception to the rule.

What seems to have been no better understood by the second set of constitution-makers than by the first, is, that rights and duties grow on the same bough, and are inseparable; that so sure as rights are created, duties are created too; and that though you may make duties without making rights (which is in fact the result of the alas! but too numerous catalogue of laws by which nobody is the better,) yet to make rights without making duties is impossible. As deep judges of legislative composition as Monsieur Jourdan, who talked prose without knowing it, it seems to have escaped their observation, that in making rights (under pretence of dealing them out ready made) they were making duties without knowing anything about the matter.

ARTICLE I., OR PREAMBLE.

The Declaration of Rights contains the obligations of legislators: — the maintenance of society requires that those who compose it, know and fulfil equally their *duties.*

Whether by *duties*, in the latter part of the sentence, were meant exactly the same things as by *obligations* in the first, I will not take upon me absolutely to determine: — if it were, it will furnish one amongst so many other proofs, how insensible these masters of legislation are of the value of useful precision, in comparison with fancied elegance.

ARTICLE II.

All the duties of the man and the citizen are derived from these two principles, engraven by nature in all breasts, in the hearts of all men, —

Do not to another that which you would not men should do to you.

---

* See *Essay on the Levelling System*, Vol. I. p. 358.

Do constantly to others the good which you would receive from men.

The known source of this double-headed precept is the New Testament: "Whatsoever ye would that men should do unto you, do ye even so unto them." Do as you would be done by, says the abridged expression of it, as given by the English proverb. What improvement the precept has received from the new edition given of it by the anti-christian hand, will presently appear.

A division is here made of it into two branches, a negative and a positive: — the tendency of the negative, placed where it is, is pernicious; — the tendency of the positive branch, worded as it is, absurd, and contrary to the spirit of the original: — the former, for want of the limitations necessary to the application here made of it, is too ample; the latter, by the tail clumsily tacked on to it, is made too narrow.

In what country is it, that it is the wish of accusers to be accused — of judges to be condemned — of guillotiners to be guillotined? In Topsyturvy-land, where cooks are roasted by pigs, and hounds hunted by hares; in that same land, a law thus worded might do no harm; and government might go on as well with it as without it. In France, thus much is clear, that whatsoever individual prosecutes a delinquent — whatsoever judge condemns him — whatsoever subordinate minister of justice executes the sentence of the judge, is a transgressor of this law—this fundamental law— given without reservation or exception — said to be engraven, just as we see it, in all hearts, and placed first in the list of duties.

Morality, not affecting precision, addresses itself to the heart: law, of which precision is the life and soul, addresses itself to the head.

The positive branch of the precept, under the necessity, it should seem, of rounding the period and making the line run well, is so worded as to shut the door against generosity. Do to a man that good. What good? Why, exactly and constantly just that very good which you want him to do to you. And if you happen not to want anything of him, what then? why then let him want, and welcome. There is nothing in this rule of law that can afford him a handle to take hold of, should he be inclined to accuse you of a breach of this fundamental duty. If you want a twopenny loaf, for example, go to the baker, and give him either a twopenny loaf or twopence: — in the first case, you fulfil the letter — in the latter, the spirit of the law. Should you see a man starving for want of such a loaf, let him starve, and welcome: — you want nothing of him, not you, — neither the twopenny loaf nor the twopence: let him starve on; there is nothing he can indict you upon in this law.

ARTICLE IV.

No one is a good citizen if he be not a good son, a good father, a good brother, a good friend, a good husband.

Good — as good as any other good thing that has been said a thousand times over in a novel or a play — silly as a law — scarcely reconcilable to the next preceding article, and not altogether reconcilable to the interests of the community at large.

The word *civil* gives name to one class of duties — the word *domestic*, to another. Is it impossible to violate one law without violating another? Does a man, by beating his wife, defraud the revenue? Does a man, who smuggles coffee, beat his wife? Brutus—the elder Brutus—who under a government where the father had the powers of life and death over the child, put his sons to death for conspiracy against the government, — he a bad citizen? or does goodness in a father consist in putting his children to death?

A friend of Lord Monteagle's was engaged with Guy Fawkes and others in a conspiracy for blowing up the legislature. Under this fourth article and the third, what should Monteagle have done? The third bids him discover the plot; for it bids him defend and serve the society and the laws, thus threatened with destruction by the plot: — the fourth bids him say nothing about the matter; for what could he say about it that would not endanger the safety of his friend. If Monteagle had happened to be a well-wisher to the conspiracy, and desirous of concealing it, what could he have desired for his security better than such a clause?

ARTICLE V.

No man is a good man if he be not frankly and religiously an observer of the laws.

Of the laws? — of what laws? — of all laws? — of all laws present and to come, whatsoever they may forbid, whatsoever they may enjoin? A religious observer of the laws which proscribe his religion—the only religion he thinks true — and bid him drag to judicial slaughter those who exercise it? To talk of religion — except in the way of rhetorical flourish—in the style which is here conceived to be the proper style for law, may perhaps be deemed on this occasion an abuse of words. Well, then: the men of September, or, since they are out of power, the men of the 10th of August, or the conquerors of the Bastile, were they good men? — were they frank and religious observers of the law, declaring and enacting the inviolability of the king? The question may seem puzzling; but a former passage will help us to a solution. By articles XVIII. and XX. of the Declaration of Rights, a law is no law unless made by democracy run mad — made by men, women, and chil-

dren,— convicts, madmen, and so on,— mediately or immediately. Here, then, we have a clue: — in a democracy run mad, goodness means submission to the laws: under every other sort of government, goodness means rebellion.

ARTICLE VI.

He who openly violates the law, declares himself in a state of war with society.

More very decent *clappable* matter for the stage: in a book of law, preciously absurd, and not a little dangerous.

To be in a state of war is to be in that state in which the business of each party is to kill the other.

In kindness to one set of button-makers, we have a silly law in England, condemning the whole country to wear now and for everlasting a sort of buttons they do not like. A more silly law can scarcely be imagined: but laws of a similar stamp are but too plentiful in Great Britain; and France will have good luck indeed, if laws of similar complexion do not, in spite of every exertion of democratic wisdom, find their way into France. In London you may see every day, in any street, men, women, and children, violating these and other such wholesome laws, knowingly or unknowingly, with sufficient openness. Since all these wicked uncivic button-wearers have declared war against society, what say you, Citizen Legal-epigram-maker, the penner of this declaration — what say you to a few four-and-twenty pounders filled with grape-shot, to clear the streets of them?

ARTICLE VII.

He who, without openly infringing the laws, eludes them by cunning or address, wounds the interests of all; he renders himself unworthy of their benevolence and their esteem.

As to the truth of this proposition, whether the eluding the observance of a law be or be not prejudicial to anybody, depends upon the nature of the law: if the law be one of those which are of no use to anybody, the eluding of it does no harm to anybody; if it be one of those which are of use to this or that description of persons, and that only, the eluding of it may be a prejudice to them, but does no harm to anybody else.

Were the law of libel, as it stands in England, to be obeyed without infraction, there would be no more liberty of discussion, publication, or discourse on political subjects, in England, than there is on religious subjects in Spain: were it executed in every instance of its being infringed, there would not be a man or a woman in England, who had eyes or ears, out of jail. The law of England, taking it with all its faults, is probably at least as near perfection upon the whole as the law of any other country: at the same time, were any good to come of it, I would engage to find laws in it, by dozens and by scores, any one of which, if generally obeyed, or at least if constantly executed, would be enough to effect the destruction of the country, and render it miserable.

Things being in this state, there seems unhappily no help for it, but that it must be left to each man's conscience in respect to what laws he shall be forward, and to what backward, to pay obedience, and lend his hand to execute. While matters are in this imperfect state, indiscriminate obedience is no more to be insisted on with regard to laws in any country, than, under a limited monarchy, passive obedience is with regard to kings.

To judge by these three last articles of the Declaration of Duties of the Man and the Citizen, the compositor seems to have been rather hardly put to it to fill up the requisite quantity of paper. Rights of man present themselves in sufficient plenty; but when he comes to duties, it becomes apparent that when a man has said it is your duty to obey the laws, he has said all that is to be said about the matter. Accordingly, the contents of these three articles are not any addition to the list of duties, but observations on the subject, consisting of a string of epigrams and fine speeches fit for plays.

In regard to offences, the great difficulty is, and the great study ought to be, to distinguish them from one another: the business of this article is to confound them. In England, simple disobedience is one thing — rebellion (technically, but rather improperly, called treason) another: the punishment of the one, where no special punishment is appointed, is a slight fine, or a short imprisonment; that of the other, capital. In France, under the auspices of this declaration, these trifling differences are not thought worth noticing: — disobedience and rebellion are discovered to be the same thing. The state of the laws in France must be superior not only to what it has ever been during the revolutionary anarchy, but to what it ever has been during the best times of French history, or of the history of any other country of considerable extent, if there be a single day in any year in which scores of laws have not been transgressed, and that openly, by thousands and tens of thousands of individuals. If this be true, the effect of this single article must be, that after the restoration of peace, and the perfect establishment of the best of all possible constitutions, the habitual state of France will be a state of civil war.

In the codes of other countries, the great end of government is to quiet and repress the dissocial passions: in France, the great study is to inflame and excite them; it is so when declaring rights, — it is so when declaring

duties. Under this code, to be a true Frenchman, a man must be for ever in a passion: — ever ready to cut either his own or his neighbour's throat. Whatever may be the subject with which this constitution commences, it ends in anarchy. Under this régime, there appears no difference between a tragedy and a law, in respect to style: fine sentiments, epigrams, *chaleur mouvement*, are equally indispensable in both. Every tragedy must be levelled at some law — every law must read like a tragedy — every law must end in a tragedy.

ARTICLE VIII.

On the maintenance of property rests the cultivation of the lands, all the productions, every means of labour, and the whole fabric of social order.

The article, as thus worded, reads bold enough, and if it were less so, it would not be faithful. It presents a striking picture of the penman. His budget of duties emptied, his subject exhausted, and what is more, even his stock of fine speeches, yet he cannot persuade himself to stop. He would fain persuade his fellow-citizens to pay respect to property, by appealing to their love of country work and its productions; and if they have no regard for these things, to their love of work in general; and if labour have no charms for them, as a last resource, to their love of social order.

ARTICLE IX.

Every citizen owes his services to his country, to the maintenance of liberty, equality, and property, as often as the law calls upon him to defend them.

This is the last in this list of duty-declaring articles; and the conclusion of this short but superfluous composition is of a piece with the beginning,—full of uncertainty, obscurity, and danger.

Every citizen owes his services to his country, &c. Owes services? What services? for what time? and upon what terms? Military services? for soldier's pay, and for life? If this were *not* meant, nothing can be easier than for any legislature—any administration—any administrator — any recruiting sergeant, to give it that meaning. *Property* we have seen already secured by double and treble tether: *Liberty* is here secured by a system of universal *crimping*. In England, pressing is still looked upon as a hardship, though no man is liable to be pressed, who has not voluntarily engaged in a profession which he knows will subject him to it. What should we say in England, were an act of Parliament to be passed, in virtue of which all individuals without exception, all ages and professions, sick and well, married and single, housekeepers and lodgers, lawyers, clergymen, and quakers, were liable to be pressed for soldiers—women perhaps into the bargain? — since in France, women's necks have been found to fit the guillotine as well as men's, and in England, thanks to the sages of the law, women make good constables.

Equality also is to be maintained, as well as property. Equality without limitation, and that by everybody, at the call of anybody. The distribution of property being at the time of issuing this declaration, prodigiously unequal — as much at least as in many a monarchy, — how are equality and property to be there at the same time?

The maintenance of both being incompatible, — to choose which of the two shall be maintained, since both cannot be maintained together, seems to be left to the wisdom of the citizens, rich and poor, industrious or idle, full or fasting, as occasion may arise. To a considerable majority, the maintenance of equality will probably be the pleasanter task of the two, as well as the more profitable.

OBSERVATIONS

ON

PARTS OF THE DECLARATION OF RIGHTS,

AS

PROPOSED BY CITIZEN SIEYES.

One general imperfection runs through the whole of this composition. The terms employed leave it continually in doubt whether it be meant to be prospective merely, or retrospective also, — whether it mean solely to declare what shall be the state of the law after the moment of the enactment of this declaration, or likewise what has been its state previous to that moment. To judge from the words, it should seem almost everywhere to include this retrospect. The objections to such retrospective declaration are — 1. That it is notoriously untrue; — 2. That the untruth of it is supposed by the very act of enacting the declaration; since if what is there established were already established, there would be no use for establishing it anew; — 3. That the declaration of the past existence of the provisions in question would be of no use, though the matter of fact were true.

"*Every society cannot but be the free work of a convention entered into between all the associated* [members.]"

Hence it appears that there never has yet been such a thing as a society existing in the world. This is the first and most fundamental of all the fundamental truths, for the discovery of which the blind and obstinate world is indebted to Citizen Sieyes. Here live we, somehow or other, in Great Britain. It seems to us that we are living in society; but Citizen Sieyes, who knows everything, and everything in his own way, knows it is no such thing. What sort of a state is it we are living in, if we really do live? To know this, we must wait till a word has been assigned as suited to our wretched condition, adapted to express the miserable state we live in, by the grace and ingenuity of Citizen Sieyes. But do we live, after all? Whether we do or no, is at least as doubtful as whether we are in society; whether the state we are in, living or not living, be a state of society.

Is Citizen Sieyes living? To judge by Bickerstaff's test, this were matter of serious doubt. The argument, however, does not seem conclusive. A man in Bedlam, or in the French Convention, might be writing such stuff — stuff altogether of a piece with this, and that not only with perfect fluency, but with perfect consistency of character between the composition and the situation that gave birth to it. From a man's being known to write such stuff, it follows, therefore, not that a man is not living, but that he is living either in Bedlam, or in the French Convention.

A man turned crazy by self-conceit, takes a word in universal use, and determines within himself that he will use it in such a sense as a man never used it in before. With a word thus poisoned, he makes up a proposition, — any one that comes uppermost; and this he calls ingenuity: — this proposition he endeavours to cram down the throats of all those over whom he has or conceives himself to have power or influence — more especially of all legislators — of the legislators of the present and all future times; — and this he calls *liberty;* and this he call *government.*

"*The object of a political society can be no other than the greatest good of all.*"

This article announces a matter of fact in the form of an universal proposition, which, so far from being universally true, is not, nor perhaps ever was true in any instance.

It exhibits the same silly and unnecessary substitution of *can not* for *ought not* — the same use of an improper word for a proper one at least equally obvious — of an ambiguous for an unambiguous — unless to the original import of the word *can*, be here meant to be added, or rather substituted, its *mischief-making*, and *anarchy-exciting* import, — and that in consequence every society in which, on any point, any notion or notions of the public good were entertained different from those of Citizen Sieyes, shall on every such occasion be regarded as *ipso facto* in a state of dissolution.

One thing may be learned from the order given to the two articles—that happiness in society is an article but of secondary account. A matter of superior importance is—that the society should have been got together upon the never-exemplified and physically-impossible plan of an *original* and *universal* contract.

"*Every man is sole proprietor of his own person, and this property is inalienable.*"

More nonsense — more mischievous nonsense, — tendencies of the most mischievous kind, wrapped up under the cover of a silly epigram: as if a man were one thing, the person of the same man another thing; as if a man kept his person, when he happened to have one, as he does his watch, in one of his pockets. While the sentence means nothing, it is as true as other nonsense: give it a meaning, any meaning whatsoever that the words are capable of bearing, according to any import ever given to them, and it is false. If by the *property* in question, it is meant to include all the *uses* that can be made of the proprietary subject, the proposition is not self-contradictory and nonsensical: it is only a nugatory proposition of the *identical* kind.

If each individual be the only individual that is to be allowed to make any use whatsoever of the faculties of all kinds, active and passive, mental and corporal, of that individual, and this be meant by being *the proprietor of the person* of an individual, then true it is, that the person of each individual can have but one proprietor: — but if the case be, in any instance, that while the individual himself, and he alone, is permitted to make use to certain purposes of the faculties of that individual for a certain time, some other—any other — is permitted to make use of the faculties of the same individual to other purposes for the same time, then the proposition, that no individual can have a property in the person of another individual, is false: — the proposition that no man shall be suffered to have any property in the person of another, would be a mischievous one, and mischievous to a degree of madness.

In what manner is the legal relation of the husband to the wife constituted, but by giving him a right for a certain time, to the use of certain faculties of her's — by giving him, in so far, a property in her person?—and so with respect to the legal relations of the father to the child under age, and of the master to the apprentice or other servant, whatever be the nature of the service.

The present tense *is*, is absurdly put for the future *shall be*. Injustice, and of the most cruel kind, lurks under this absurdity. The effect of the future would only be to cut up domestic power, and thence domestic society, for the future: the effect of the present is to cut it up at the *instant*, and, by necessary inference, as to the *past*, and to put every past exercise of such power upon the footing of a crime; in a word, to have the retroactive effect disclaimed by the constitution of 1795. If no individual have at this present time any property, however limited, in the person of any other individual, it must be in virtue of some cause which has prevented his ever having had any such property in any past period of time: it must be, in a word, in virtue of some such cause as this, viz. its being contrary to the eternal, as well as inalienable and natural rights of man to possess any such property. If it be a crime in a man *now* to send his servant on an errand with a bundle on his back — to dip his ailing infant in a cold bath—or to exercise the rights supposed to be given him by marriage on his wife — it must have always been a crime, and a crime of equal dye, punishable at the mercy of such judges as Citizen Sieyes.

To make the matter worse — the mischief greater—the absurdity more profound, — this property, such as it is, whatever it be — all the property that any individual has in his own person — is to be considered as *inalienable*. No individual is to be suffered to give any other individual a right to make use of his person, his faculties, his services, in any shape. No man shall let himself out to service — no man shall put himself or his son out to serve as an apprentice — no man shall appoint a guardian to his child — no woman shall engage herself to a man in marriage.

Will it be said, that there is no such thing as *alienation for a time?* Or will it be said, in justification of the citizen, that the citizen did not know what he was talking about, and that though he spoke of alienation in general, alienation for all manner of terms, the only sort of alienation he really meant to interdict, in respect of the property in question, was alienation *during life?* and that the meaning of the citizen was not absolutely to forbid marriage — that he meant to allow of marriage for limited terms of years, and meant only to prohibit marriage for life?

But supposing even this to have been the purpose, and that purpose ever so good a one, the provision is still a futile one, and inadequate to that purpose. To what purpose forbid an alienation for *life*, if you admit of it for *years*, without restricting it to such a number of years as shall ensure it against possessing a duration co-extensive with at least the longest *ordinary* term of life? No such limitation has the citizen vouchsafed to give: — possibly as not finding it altogether easy to put any such limitation in years and figures into the mouth of *Queen Nature*, whose prime minister Citizen Sieyes, like so many other citizens, has been pleased to make himself.

The article seems to be levelled at negro

slavery; but I do not see what purpose it is capable of answering in that view. Does it mean to announce what *has been* the state of the law hitherto, or what *shall be* the state of the law in future? In the first case, its truth is questionable, and, true or false, it is of no use. In the latter sense, does it mean to declare, that no person shall have the right of exacting personal service of any other, or producing physical impressions on his passive faculties, without his consent? It reprobates all rights to services of any kind, and all powers of punishment. Does it declare that no such powers shall exist without limitation?—It does not so much as provide against negro slavery, even where the conditions on which it is established are most indefensible; for nowhere has the power of the master over the slave subsisted without limitations.

Does this article mean to set at perfect liberty all negro slaves at once? This would be not more irreconcilable with every idea of justice with regard to the interest of the present master, than with every idea of prudence with regard to the interest of the slaves themselves.

"*Every author may publish, or cause his productions to be published, and he may cause them to circulate freely, as well by the post as by any other way, without having ever to fear any abuse of confidence.*"

I shall make no observations upon the dangers arising from this unlimited liberty; but I cannot refrain from pointing out the silliness of the expression. The author intended to have said, that every abuse of confidence ought to be treated as an offence: but what he has said is, that the offence is impossible, so impossible that there is no reason to fear it; as if this declaration would be sufficient to deprive government and individuals of the power to commit an abuse of confidence.

"*Letters, in particular, ought to be considered as sacred by all the intermediate persons who may be found between the person who writes, and him to whom they are written.*"

What does this word *sacred* mean? Is this the manner in which a legislator ought to speak?

What! if a calumny — a plan of conspiracy — a project of assassination — be put into a letter, is that letter to be sacred? Will the opening it be *sacrilege?* This crime, if it be one, will be ranked in that class of crimes which have commonly been considered the most enormous offences against religion — offences against God himself.

Whilst as to the act itself, is it for the public good that government should open the letters? That is the question. If the law prohibit it, the post would become a terrible engine in the hands of malefactors and conspirators. With the intention of protecting the communications of individuals, this law would expose the public to the greatest dangers. There are some crimes so mischievous, that no means ought to be neglected for their prevention or detection. Will it be said, that the fear of having their letters opened will restrain honest correspondents in the communications of commerce, or the effusions of friendship?

It is true, that if the simple communication of opinions between individuals should be constituted a crime, the opening of letters might become a terrible engine of tyranny. But it is here that the precautions against abuse should be placed. It is this which is done in England, where the secretary of state may open letters upon his responsibility, though it be not allowed to any one else.

"*Every man is equally at liberty to go or stay, to enter or to go out, and even to leave the kingdom and to return into it, as shall seem good to him.*"

This article has reference not to the citizen alone, but to every man, to every stranger, as well as every Frenchman. All are at liberty to go or stay, to enter or to go out, to leave the kingdom or to return into it, as shall seem good to them. Absurdity cannot go farther. Is there to be no police? Cannot intercourse be interdicted — may not public edifices be closed — may not access to fortifications be prevented, &c.? With this unlimited right, how would it be possible to advise the construction of prisons for the detention of malefactors? How could the author of this declaration tolerate the laws against emigrants? Were not these laws a formal denial of the rights of man?

I do not impute these extravagant intentions to the author of the article: he had concluded the preceding article by the words — "*The law alone can mark the limits which ought to be given to this liberty as well as every other;*" and I suppose that the words *in the same manner*, at the head of this, announce that the liberty of going and coming is subject to the same restriction. But then the proposition which seems to say much, would have said nothing—"You may do everything except what the laws prohibit." Dangerous or insignificant, such is the alternative which is without ceasing found in this declaration.

"*In short, every man is at liberty to dispose of his wealth, of his property, and to regulate his expense as he thinks proper.*"

Here there is no legal restriction: the proposition is unlimited. If by *disposing of his wealth*, the author intend that he may do whatever he likes, the proposition is absurd in the extreme. Are there no necessary limits to the employment of his property? Ought a man to have the right of establishing after his death, either religious or anti-religious foundations at the expense of his family?

Ought not the law to hinder an individual from disinheriting his children without cause assigned?

"*To regulate his expense as he thinks proper,*" is a good housekeeping expression. A master may speak in this manner to his steward; but is this the style of a legislator? Minors, madmen, prodigals, ought to be placed under positive restrictions as to their expenses. There are cases in which certain sumptuary laws may be suitable. There may be good reasons for prohibiting games of hazard, lotteries, public entertainments, donations after the manner of the Romans, and a thousand other species of expense.

"*The law has for its object the common interest; it cannot grant any privilege to any one.*"

The first proposition is false in fact. The law *ought* only to have for its object the common interest: this is what is true. This error perpetually recurs in this little work.

But is the consequence which is drawn from this principle just? May there not be some privileges founded upon the common interest?

In one sense, all powers are privileges; in another sense, all social distinctions are so also. A title of honour, an honorary decoration, an order of knighthood — these are all privileges. Ought the legislature to be interdicted from the employment of these means of remuneration?

There is one species of privilege certainly very advantageous: the patents which are granted in England for a limited time, for inventions in arts and manufactures. Of all the methods of exciting and rewarding industry, this is the least burthensome, and the most exactly proportioned to the merit of the invention. This privilege has nothing in common with monopolies, which are so justly decried.

"*And if privileges are established, they ought to be instantly abolished, whatever may be their origin.*"

Here is the most unjust, the most tyrannical, the most odious principle. *Instantly abolished!* This is the order of the despot, who will listen to nothing, who will make everything bend to his will, who sacrifices everything to his caprice.

There are some privileges and rights which have been purchased at great price. Their sudden abolition would throw a great number of families into despair: it would strip them of their property — it would produce the same wrong to them as if a multitude of strangers were admitted to share their revenues, and that instantly.

There are some magisterial offices held by hereditary title. The possessors would be deprived of them without regard to their circumstances, to their welfare, or even to the interests of the state itself — and that instantly.

There are some commercial societies to which the law has granted monopolies. These monopolies are abolished, without regard to the ruin of the associates, to the advances they have made, to the engagements they have formed — and that instantly.

One great merit in a good administration is, that it proceeds gently in the reform of abuses — that it does not sacrifice existing interests — that it provides for the enjoyments of individuals — that it gradually prepares for good institutions — that it avoids all violent changes in condition, establishment, and fortune.

Instantly, is a term suitable to the meridians of Algiers and Constantinople. Gradually, is the language of justice and prudence.

"*If men are not equal in means,—that is to say, in wealth, in mind, in strength, &c. — it does not follow that they ought not all to be equal in rights.*"

Certainly the wife is not equal in rights to her husband; neither is the child under age equal to his father, nor the apprentice to his master, nor the soldier to his officer, nor the prisoner to the jailer, unless *the duty of obedience* should be exactly equal to the right of commanding. Difference in rights is precisely that which constitutes social subordination. Establish equal rights for all, there will be no more obedience, there will be no more society.

He who possesses property possesses rights — exercises rights — which the non-proprietor does not possess and does not exercise.

If all men are equal in rights, there will not exist any rights; for if all have the same right to a thing, there will no longer be any right for any one.

"*Every citizen who is unable to provide for his own wants, has a right to the assistance of his fellow-citizens.*"

To have a right to the assistance of his fellow-citizens, is to have a right to their assistance in their individual or their collective capacity.

To give to every poor person a right to the assistance of every individual who is not equally poor, is to overturn every idea of property; for as soon as I am unable to provide for my subsistence, I have right to be supported by you: I have a right to what you possess — it is my property as well as yours; the portion which is necessary to me is no longer yours — it is mine; you rob me if you keep it from me.

It is true that there are difficulties in its execution. I am poor: to which of my fellow-citizens ought I to address myself, to make him give me what I want? Is it to Peter rather than to Paul? If you confine yourself to declaring a general right, without

CONTENTS.*

ESSAY I. Objects of International Law, ... *page* 537
II. Of Subjects, or of the Personal Extent of the Dominion of the Laws, . 540
III. Of War, considered in respect of its Causes and Consequences, ... 544
IV. A Plan for an Universal and Perpetual Peace, ... 546

* The original MSS. from which these Essays are edited, consist of *Projet Matiere*, *Marginata*, and fragments. By the first of these terms, Bentham designated the contents of paragraphs he intended to write; by the second, the contents of paragraphs he had written: — by means of these two sets of papers, the fragments have been arranged, and the connexion between them supplied; — but on this, as on every other occasion, the object of the Editor has been, without addition of his own, to show what Bentham has said upon each subject. This will account for the incompleteness of the Essays, and for the circumstance, that upon some points there are only indications of the subjects which Bentham had intended to discuss.

The MSS. here edited bear date 1786 to 1789.

PRINCIPLES OF INTERNATIONAL LAW.

ESSAY I.

OBJECTS OF INTERNATIONAL LAW.

If a citizen of the world had to prepare an universal international code, what would he propose to himself as his object? It would be the common and equal utility of all nations: this would be his inclination and his duty. Would or would not the duty of a particular legislator, acting for one particular nation, be the same with that of the citizen of the world? That moderation, which would be a virtue in an individual acting for his own interests, would it become a vice, or treason, in a public man commissioned by a whole nation? Would it be sufficient for him to pursue in a strict or generous manner their interests as he would pursue his own? — or would it be proper, that he should pursue their interests as he would pursue his own, or ought he so to regulate his course in this respect as they would regulate theirs, were it possible for them to act with a full knowledge of all circumstances? And in this latter case, would the course he would pursue be unjust or equitable? What ought to be required of him in this respect?

Whatever he may think upon these questions — how small soever may be the regard which it may be wished that he should have for the common utility, it will not be the less necessary for him to understand it. This will be necessary for him on two accounts: In the first place, that he may follow this object in so far as his particular object is comprised in it; — secondly, that he may frame according to it, the expectations that he ought to entertain, the demands he ought to make upon other nations. For, in conclusion, the line of common utility once drawn, this would be the direction towards which the conduct of all nations would tend — in which their common efforts would find least resistance — in which they would operate with the greatest force — and in which the equilibrium once established, would be maintained with the least difficulty.

Let us take, for example, the famous law with respect to prizes, adopted by so many nations at the suggestion of Catherine II. of Russia. How formidable soever may have been the initiating power, there is no reason to think that it was fear which operated upon so many nations, together so powerful, and some of them so remote: it must have been its equity, that is to say, its common utility, or, what amounts to the same thing, its apparent utility, which determined their acceptance of it. I say real or apparent; for it will be seen that this is not the place to decide without necessity upon a question so delicate and complex.

But ought the sovereign of a state to sacrifice the interests of his subjects for the advantage of foreigners? Why not? — provided it be in a case, if there be such an one, in which it would have been praiseworthy in his subjects to make the sacrifice themselves.

Probity itself, so praiseworthy in an individual, why should it not be so in a whole nation? Praiseworthy in each one, how can it be otherwise in all? It may have been true that Charles the Second did well in selling Dunkirk: he would not have done less well, had he not put the price in his own pocket.

It is the end which determines the means. Here the end changes (or at least appears to change;) it is therefore necessary that the means should change or appear to change also.

The end of the conduct which a sovereign ought to observe relative to his own subjects, — the end of the internal laws of a society, — ought to be the greatest happiness of the society concerned. This is the end which individuals will unite in approving, if they approve of any. It is the straight line — the shortest line — the most natural of all those by which it is possible for a sovereign to direct his course. The end of the conduct he ought to observe towards other men, what ought it to be, judging by the same principle? Shall it again be said, the greatest happiness of his own subjects? Upon this footing, the welfare, the demands of other men, will be as nothing in his eyes: with regard to them, he will have no other object than that of subjecting them to his wishes by all manner of means. He will serve them as he actually serves the beasts, which are used by him as they use the herbs on which they browse — in short, as the ancient Greeks, as the Romans, as all the models of virtue in antiquity, as all the nations with whose history we are acquainted, employed them.

Yet in proceeding in this career, he cannot fail always to experience a certain resistance — resistance similar in its nature and in its cause, if not always in its certainty and efficacy, to that which individuals ought from the first to experience in a more restricted career; so that, from reiterated experience, states ought either to have set themselves to seek out — or at least would have found, their line of least resistance, as individuals of that same society have already found theirs; and this will be the line which represents the greatest and common utility of all nations taken together.

The point of repose will be that in which all the forces find their equilibrium, from which the greatest difficulty would be found in making them to depart.

Hence, in order to regulate his proceedings with regard to other nations, a given sovereign has no other means more adapted to attain his own particular end, than the setting before his eyes the general end — the most extended welfare of all the nations on the earth. So that it happens that this most vast and extended end — this foreign end — will appear, so to speak, to govern and to carry with it the principal, the ultimate end; in such manner, that in order to attain to this, there is no method more sure for a sovereign than so to act, as if he had no other object than to attain to the other; — in the same manner as in its approach to the sun, a satellite has no other course to pursue than that which is taken by the planet which governs it.

For greater simplicity, let us therefore substitute everywhere this object to the other: — and though unhappily there has not yet been any body of law which regulates the conduct of a given nation, in respect to all other nations on every occasion, as if this had been, or say rather, as if this ought to be, the rule, — yet let *us* do as much as is possible to establish one.

1. The first object of international law for a given nation: — Utility general, in so far as it consists in doing no injury to the other nations respectively, saving the regard which is proper to its own well-being.

2. Second object: — Utility general, in so far as it consists in doing the greatest good possible to other nations, saving the regard which is proper to its own well-being.

3. Third object: — Utility general, in so far as it consists in the given nation not receiving any injury from other nations respectively, saving the regard due to the well-being of these same nations.

4. Fourth object: — Utility general, in so far as it consists in such state receiving the greatest possible benefit from all other nations, saving the regard due to the well-being of these nations.

It is to the two former objects that the duties which the given nation ought to recognise may be referred. It is to the two latter that the rights which it ought to claim may be referred. But if these same rights shall in its opinion be violated, in what manner, by what means shall it apply, or seek for satisfaction? There is no other mode but that of war. But war is an evil — it is even the complication of all other evils.

5. Fifth object: — In case of war, make such arrangements, that the least possible evil may be produced, consistent with the acquisition of the good which is sought for.

Expressed in the most general manner, the end that a disinterested legislator upon international law would propose to himself, would therefore be the greatest happiness of all nations taken together.

In resolving this into the most primitive principles, he would follow the same route which he would follow with regard to internal laws. He would set himself to prevent positive international offences — to encourage the practice of positively useful actions.

He would regard as a positive crime every proceeding — every arrangement, by which the given nation should do more evil to foreign nations taken together, whose interests might be affected, than it should do good to itself. For example, the seizing a port which would be of no use except as the means of advantageously attacking a foreign nation; — the closing against other nations, or another nation, the seas and rivers, which are the highways of our globe; — the employing force or fraud for preventing a foreign nation from carrying on commerce with another nation. But by their reciprocity, injuries may compensate one another.

In the same manner, he would regard as a negative offence every determination, by which the given nation should refuse to render positive services to a foreign nation, when the rendering of them would produce more good to the last-mentioned nation, than it would produce evil to itself. For example, if the given nation, without having reason to fear for its own preservation (occupying two countries of which the productions were different,) should obstinately prohibit commerce with them and a foreign nation: — or if when a foreign nation should be visited with misfortune, and require assistance, it should neglect to furnish it: — or, in conclusion, if having in its own power certain malefactors who have *malâ fide* committed crimes to the prejudice of the foreign nation, it should neglect to do what depends upon it to bring them to justice.

War is, as has been said, a species of procedure by which one nation endeavours to enforce its rights at the expense of another nation. It is the only method to which recourse can be had, when no other method of

obtaining satisfaction can be found by complainants, who have no arbitrator between them sufficiently strong, absolutely to take from them all hope of resistance. But if internal procedure be attended by painful ills, international procedure is attended by ills infinitely more painful — in certain respects in point of intensity, commonly in point of duration, and always in point of extent. The counterpart of them will, however, be found in the catalogue of offences against justice.

The laws of peace would therefore be the substantive laws of the international code: the laws of war would be the adjective laws of the same code.

The thread of analogy is now spun; it will be easy to follow it. There are, however, certain differences.

A nation has its property — its honour — and even its condition. It may be attacked in all these particulars, without the individuals who compose it being affected. Will it be said that it has its person? Let us guard against the employment of figures in matter of jurisprudence. Lawyers will borrow them, and turn them into fictions, amidst which all light and common sense will disappear; then mists will rise, amidst the darkness of which they will reap a harvest of false and pernicious consequences.

Among nations, there is no punishment. In general, there is nothing but restitution, to the effect of causing the evil to cease; — rarely, indemnification for the past; because among them there can scarcely be any *mauvaise foi*. There is but too much of it too often among their chiefs; so that there would be no great evil if, at the close of his career, every conqueror were to end his days upon the rack — if the justice which Thomyris executed upon Cyrus were not deemed more striking, and his head were not thrown into a vessel of blood, — without doubting that the head of Cyrus was most properly thrown there. But however dishonest the intention of their chiefs may be, the subjects are always honest. The nation once bound — and it is the chief which binds it — however criminal the aggression may be, there is properly no other criminal than the chief: — individuals are only his innocent and unfortunate instruments. The extenuation which is drawn from the weight of authority, rises here to the level of an entire exemption.

The suffrages of the principle of antipathy are here found in accord with the principle of utility: on the one part, vengeance wants a suitable object; on the other hand, every punishment would be unnecessary, useless, expensive, and inefficacious.

As to the third and fourth objects, it is scarcely necessary to insist on them: — nations, as well as men, sovereigns as well as individuals, pay sufficient attention to their own interests — there is scarcely any need to seek to lead them to it. There remain the two first and the last.

To actions by which the conduct of an individual tends to swerve from the end which internal laws ought to propose to themselves, I have given, by way of anticipation, the name of offences: — by a similar anticipation, we may apply the same appellation to actions by which the conduct of a whole nation swerves from the object which international laws ought to propose to themselves.

Among sovereigns, as well as among individuals, there are some offences *de bonne foi*; there are others *de mauvaise foi*. One must be blind to deny the latter — one must be much more sadly blind to deny the others. People sometimes think to prove their discernment by referring everything to the latter head, or to prove it equally by referring everything to the former. It is in this manner they proceed in judging of men, and especially of sovereigns: they grant to them an intelligence without limits, rather than recognise in them a grain of probity; they are believed never to have blushed at folly, provided that it has had malignity for its companion. So much has been said of the injustice of sovereigns, that I could wish a little consideration were given to the still more common injustice of their detractors; who, whilst they preserve their concealment, revenge themselves upon the species in general, for the adulation which in public they lavish upon individuals.

The following are among the causes of offences *de bonne foi*, and of wars: —

1. Uncertainty of the right of succession with regard to vacant thrones claimed by two parties.

2. Intestine troubles in neighbouring states. These troubles may also have for their cause an uncertainty of the same kind as the preceding, or a dispute concerning constitutional law in the neighbouring state, either between the sovereign and his subjects, or between different members of the sovereign body.

3. Uncertainty with respect to limits, whether actual or ideal. The object of these limits may be to keep separate either goods, or persons, or causes.

4. Uncertainty as to the limits of new discoveries made by one party or another.*

* In modern times, one of the most fruitful sources of war has been the limits of new discoveries. They have sometimes been traced by common agreement: — but this has seldom happened till after wars or discontents which have sown the seeds of wars. It would be better to undertake such labours in cool blood, and to make previous arrangements with regard to possible discoveries, without waiting till they are made. It was thus that a pope once thought, with a mathematical line, to have for ever crushed the seeds of future wars. This was not ill-imagined at a time when the earth was flat, and the

5. Jealousies caused by forced cessions, more or less recent.

6. Disputes or wars, from whatsoever cause they may arise, among circumjacent states.

7. Religious hatred.

Means of Prevention.

1. Homologation of unwritten laws which are considered as established by custom.

2. New conventions — new international laws to be made upon all points which remain unascertained; that is to say, upon the greater number of points in which the interests of two states are capable of collision.

3. Perfecting the style of the laws of all kinds, whether internal or international. How many wars have there been, which have had for their principal, or even their only cause, no more noble origin than the negligence or inability of a lawyer or a geometrician!

ESSAY II.

OF SUBJECTS, OR OF THE PERSONAL EXTENT OF THE DOMINION OF THE LAWS.

Coextensive to dominion is jurisdiction: dominion the right of the sovereign; jurisdiction of the judge. Not that it is necessary that there should be any one judge or set of judges whose jurisdiction should be coextensive with the dominion of the sovereign — only that for every particle of dominion there should be a correspondent particle of jurisdiction in the hands of some judge or other: correspondent to one field of dominion there may be many fields of jurisdiction.

What is dominion? It is either the power of contrectation, or else that of imperation, for there are no others. But the power of contrectation is a sort of power which, in a settled government, it scarcely ever becomes either necessary or agreeable to the sovereign, as such, to exercise; so that under the head of the power of imperation is comprised all the power which the sovereign is accustomed to exercise: and the same observation may be applied to the power of the judge.

Of the power of imperation, or the power of issuing mandates, the amplitude will be as the amplitude of the mandates which may be issued in virtue of it: the amplitude and quality of the mandates will be as the amplitude and quality of the persons who are their *agible* subjects — the persons who are their *passible* subjects — the things, if any, which are their *passible* subjects, and the acts which are their *objects* in place and time.

The persons who are their *agible* subjects are the persons whose acts are in question — the persons whose acts are the objects of the mandate.

A sovereign is styled such, in the first instance, in respect of the persons whom he has the right or power to command. Now, the right or legal power to command may be coextensive with the physical power of giving force and effect to the command: that is, by the physical power of hurting — the power of hyper-physical contrectation employed for the purpose of hurting. But by possibility, every sovereign may have the power of hurting any or every person whatsoever, and that not at different times only, but even at one and the same time.

According to this criterion, then, the sphere of possible jurisdiction is to every person the same; but the problem is to determine what persons ought to be considered as being under the dominion of one sovereign, and what others under the dominion of another; — in other words, what persons ought to be considered as the subjects of one sovereign, and what as the subjects of another.

The object of the present essay is to determine, upon the principle of utility, what persons ought, in the several cases that may present themselves, to be considered as the subjects of the law of the political state in question, as subject to the contrectative or imperative power of that law.

Proceeding as usual upon the exhaustive plan, I shall examine —

1. Over what persons the law can in point of possibility exercise dominion; what persons in point of possibility may be the subject of it; what persons in point of possibility it may treat as upon the footing of its subjects with effect; over what persons the law has possible dominion and jurisdiction; over what persons the law may have dominion and jurisdiction in point of force.

2. Over other persons than these, it is plain that it can never be right to say, the law *ought* upon the principle of utility to ex-

---

servant of servants was the ruler of kings. Since that time the earth has become round, and the power of the triple crown is somewhat retrenched. Still, however, that demarcation is not the less good as a lesson, how defective soever it may be as a law. The difficulty would be to trace such limits as should agree with objects which have not been seen. An island, for example: in what case ought the whole of it to belong to those who first discovered it, and when to many others who have equally touched at it? Ought it to belong to him who first saw it without entering it, — to him who first entered it, — or to him who first went round it? How also shall an island in every case be distinguished from a part of a continent, or even from an entire continent, which may be very extensive? And when it respects a discovered continent, to what distance shall the right of posession extend? Shall it be the space inclosed by the sea, the two nearest navigable rivers, and the high ground in which these rivers take their rise? What depth shall constitute a navigable river? &c. In these points may be seen a crowd of questions sufficiently difficult of resolution.

ercise jurisdiction. Why? Because it is idle to say of the lawgiver, as of anybody else, that he ought to do that which by the supposition is impossible.

The next inquiry is, then, — the persons over whom the law may in point of possibility exercise dominion being given, over what sort of persons in that number ought the law in point of utility to exercise dominion? what persons of that number ought to be looked upon as subject to it? over what persons of that number it has jurisdiction in point of *right?* taking general utility as the measure of right, as usual, where positive law is out of the question.

3. It will then be another, and that a distinct question, over what sort of persons, and in what cases, the law in any given state does actually exercise dominion? and over what sort of persons, and in what cases, the law has dominion in point of exercise?

Dominion, then, may be distinguished into — 1. Dominion potential, or in point of force; 2. Dominion actual, or dominion in point of exercise; 3. Jurisdiction rightful or rather approveable, or jurisdiction in point of moral right.

The nature of the present design is to determine in what cases, if actual dominion were established, it would be *rightful:* in other words, in what cases it is the moral right, and at the same time the moral duty, — in what cases the moral right, without being the moral duty, — of the given sovereign, as towards other sovereigns, to cause jurisdiction to be exercised over persons who are subject to his physical power? How far, and in what points, sovereigns, in the jurisdiction which they cause to be exercised over such persons as are within their reach, ought to yield or be aiding to each other?

An individual can be subject to a sovereign no farther than the physical power which that sovereign has of hurting him, or his *afflictive* power, as it may be called, extends. The question is, the cases in which the sovereign has the power of hurting him being given, in which of them ought he, upon the principle of utility, to exercise that power? — in which of them ought other sovereigns, who may think their power concerned, to acquiesce in his exercising such power?

In every state, there are certain persons who are in all events, throughout their lives, and in all places, subject to the sovereign of that state — it is out of the obedience of these that the essence of sovereignty is constituted: these may be styled the *standing or ordinary subjects* of the sovereign or the state; and the dominion over them may be styled fixed or regular. There are others who are subject to him only in certain events, for a certain time, while they are at a certain place: the obedience of these constitutes only an accidental appendage to his sovereignty: these may be termed his *occasional* or *extraordinary* subjects, or *subjects pro re natâ;* and the dominion he has over them may be styled *occasional.**

His afflictive power being the limit of his actual as well as of his rightful dominion, his standing subjects will be those over whom he has the most afflictive power — over whom his afflictive power is the strongest: over his occasional subjects, his afflictive power will not be so strong. Now the points in which a man can be hurt are all of them comprised, as we have seen, under these four, viz. his person, his reputation, his property, and his condition. Of these four points, that in respect of which he can be made to suffer most is his person: since that includes not only his liberty, but his life. The highest jurisdiction therefore, is that of which the subject is a man's person. According to this criterion, then, the standing subjects of a sovereign should be those individuals whose persons are in his power.

This criterion would be a perfectly clear and eligible one, were the case such, that in the ordinary tenor of human affairs, the persons of the same individuals were constantly under the physical power, or, as we say, within the *reach* of the same sovereign. But this is not the case. The different interests and concerns of the subject, the interest even of the sovereign himself, requires the subject to transport himself necessarily to various places, where, according to the above criterion, he would respectively become the subject of so many sovereigns. But the question is, to what sovereign a given individual is subject, in a sense in which he is not subject to any other? This question, it is plain, can never be determined by a criterion which determines him to be the subject of one sovereign, in the same sense in which he may be subject to any number of other sovereigns. According to this criterion, a sovereign might have millions of subjects one day, and none at all the next.

Some circumstance, therefore, more constant and less precarious, must be found to ground a claim of standing dominion upon, than that of the present facility of exercising an afflictive power over the person of the supposed subject: a facility which, in truth, is no more than might be possessed not only by an established sovereign, but by any, the most insignificant oppressor. Any man may, at times, have the power of hurting any other man. The circumstance of territorial dominion — dominion over land — possesses the properties desired. It can seldom happen that two sovereigns can, each of them, with equal

* Country allegiance, sovereignty and subjection, may therefore be either fixed and regular, or occasional.

facility, the other being unwilling, traverse the same tract of land. That sovereign then who has the physical power of occupying and traversing a given tract of land, insomuch that he can effectually and safely traverse it in any direction at pleasure, — at the same time, that against his will another sovereign cannot traverse the same land with equal facility and effect, — can be more certain of *coming at* the individual in question, than such other sovereign can be, and therefore may be pronounced to have the afflictive power over all such persons as are to be found upon that land — and that a higher afflictive power than any other sovereign can have. And hence, the maxim dominion over person depends upon dominion over land.

But even this *indicium*, this mark, is not a ground of sufficient permanence whereon to found the definition of standing sovereignty: for the same individual who is one day on land, which is under the dominion of a given sovereign, may another day be on land which is not under his dominion: from this circumstance, therefore, no permanent relation can be derived. But, that the relation should be a permanent one, is requisite on various grounds, upon the principle of utility — that each subject may know what sovereign to resort to, principally for protection, — that each sovereign may know what subjects to depend upon for obedience, — and that each sovereign may know when to insist, and when to yield in any contest which he might have with any other sovereign, who might lay a claim to the obedience of the same subjects.

The circumstance, then, which is taken for the *indicium* of sovereignty on the one part, and subjection on the other, should be not a *situation*, which at any time may change, but an *event:* this event should be one which must have happened once — which cannot have happened more than once — and which, having happened once, cannot be in the condition of one which has not happened; in short, an event which is past, necessary, and unicurrent. Such an event is that found in the event of a man's *birth* — which must have happened for the man to exist — which cannot happen a second time, and which, being over, cannot but have happened — which must have happened in some district of the earth; so that at that period the man must have been within the physical power of the sovereign within whose territory he was born.

Yet still it is not birth that is the immediate ground of jurisdiction: the immediate ground is *presence* — presence with reference to the *locus* of the territorial dominion: if birth be the ground of dominion, it is only in virtue of the presumption which it affords of the other circumstance. In every state, almost, there are some who emigrate from the dominion within which they were born. But in every state almost, it is otherwise with by far the greater number. In civilized nations the greater part of mankind are *glebæ ascriptitii*, fixtures to the soil on which they are born. With nations of hunters and shepherds — with tribes of American savages, and hordes of Tartars or Arabians, it is otherwise. But with these we have no business here.

Thus it is that dominion over the soil confers dominion *de facto* over the greater part of the natives, its inhabitants; in such manner, that such inhabitants are treated as owing a permanent allegiance to the sovereign of that soil: and, in general, there seems no reason why it should not be deemed to do so, even *de jure*, judging upon the principle of utility. On the one hand, the sovereign, on his part, naturally expects to possess the obedience of persons who stand in this sort of relation to him: possessing it at first, he naturally expects to possess it — he is accustomed to reckon upon it: were he to cease to possess it, it might be a disappointment to him: any other sovereign having even begun to possess the allegiance of the same subject, has not the same cause for expecting to possess it; not entertaining any such expectation, the not possessing it is no disappointment: for subjects, in as far as their obedience is a matter of private benefit to the sovereign, may, without any real impropriety *(absit verbo invidia,)* be considered as subjects of his property. They may be considered as his property, just as any individual who owes another a service of any kind, may, *pro tanto*, be considered as his property. We speak of the service as being his property (such is the turn of the language,) that is, as being the object of his property; but a service being but a fictitious entity, can be but a fictitious object of property, — the real, and only real object, is the person from whom the service is due.

On the other hand, let us consider the state of mind and expectations of the subject. The subject having been accustomed from his birth to look upon the sovereign as his sovereign, continues all along to look upon him in the same light: to be obedient to him is as natural as to be obedient to his own father. He lives, and has all along been accustomed to live under his laws. He has some intimation (I wish the universal negligence of sovereigns, in the matter of promulgation, would permit me to say anything more than a very inaccurate and general intimation,) some intimation he has, however, of the nature of them. When occasion happens, he is accustomed to obey them. He finds it no hardship to obey them, none at least in comparison with what it would be were they altogether new to him; whereas, those of another sovereign, were they in themselves more easy, might, merely on account of their novelty, appear, and therefore be, harder upon the whole.

Thus much as to the more usual case where a man continues to inhabit, as his parents did before him, the country in which he was born. But what if his parents, being inhabitants of another country, were sojourners only, or mere travellers in the country in which he was born, and he, immediately after his birth, carried out of it never to see it again? The manners and customs, the religion, the way of thinking, the laws, of the one country opposite to those of the other? The sovereign of the one, at war with the sovereign of the other? If regard be paid to *birth*, something surely is due to *lineage:* an Englishwoman, travelling with her husband from Italy through France, is delivered of a son in France: — shall the son, when he grows up, be punished as a traitor, if taken in battle when fighting against the king of France? or, on the other hand, supposing it to be right and politic for the king of France to refuse to strangers born out of his dominion any of the rights enjoyed by his native subjects, would it be right that this man, who has never looked upon the French as his countrymen, nor the king of France as his sovereign, should partake of privileges which are denied to the subjects of the most favoured foreign nation? Shall the offspring of English protestants, born at Cadiz, be reclaimed as a fugitive from the inquisition? or the offspring of Spanish catholics, born in London, undergo the severity of the English laws, for being reconciled to the Church of Rome? Shall the Mahometan, born at Gibraltar, be punished for polygamy or wine drinking?

Nor would it, it should seem, be an adequate remedy to these inconveniences to take the birth-place of the parents, or, in case of their birth-places being different, that of the father, for example, as the *indicium*, to determine the allegiance of the child: the circumstances of their birth might have been accompanied by a similar irregularity. During a man's education, his parents may have lived half their time in one country, half in another; what external mark can there be to determine to which of the two countries, if to either, his affections are attached?

The best way, therefore, seems to be, to refer the solution of the question to those alone who are in a condition to give it: and to refer the option of his country, in the first instance, to the parents or guardian provisionally, while the child is incapable of judging for himself; afterwards to himself, as soon as he is judged capable; so that when he comes to a certain age he shall take his choice.

A man may, therefore, be a member of a community either permanently or occasionally.

*A man may be permanently a member of a community: — 1. By lineage, as the paternal grandson of an Englishman is an Englishman, wherever born; 2. By birth; 3 By naturalization.

A man may be occasionally the member of a community:—1. By fixed residence; 2. By travelling.

Jurisdiction may be distinguished into — 1. Potential; 2. Rightful; 3. Actual.

The first principle with regard to its exercise, is regard for the interest of one's own state.

This must however be controuled in point of volition and act, by the consideration of what will be endured by other states.

The next consideration is, in what cases jurisdiction may be assumed for the sake of foreign states.

Over the natives of a foreign state, jurisdiction may be exercised: — 1. For its own sake; 2. For the sake of the native's state; 3. For the sake of some other state; 4. For the sake of mankind at large.

For the same reasons, it may be exercised over its own subjects for offences committed in foreign states.

For its own sake it ought to punish all injurious offences committed for lucre, although committed abroad by foreigners.

The following considerations may restrain the state proposed from punishing offences committed out of its dominions: —

1. The difficulty of getting evidence, since foreigners cannot be compelled to appear.

Supposing the difficulty of procuring evidence to be got over, there is another difficulty, — the insuring the veracity of the evidence. If perjury should be detected, and even proofs obtained after the foreigner is gone back to his own country, he could not be punished.

This difficulty might be overcome by a commission to examine foreign witnesses abroad, touching any particular fact, application being made to the sovereign abroad for his sanction to corroborate the powers of the commissioners; or the commission might be given to his own subjects to execute, — it being left to the judgment of the judges in each case, whether the evidence alleged be the whole, or if not the whole, whether sufficient evidence.

Such a concurrence and communication is no more visionary and impracticable in all cases, than in admiralty causes concerning captures.

2. The fear of giving umbrage to foreign powers.

The former consideration applies equally to offences committed by citizens as by foreigners. The latter scarcely at all to offences committed by citizens, or at least not so strongly, as to offences committed by foreigners — citizens of the State by which it is feared umbrage may be taken.

* The following sentences are taken from Bentham's "*Projet Matiere.*"—*Ed.*

The following considerations may impel the State proposed, to punish offences committed out of its dominion: —

1. Regard for the interest of the citizens.

2. Regard for the interests of foreigners,— viz. the foreign state or individual injured by the offence.

ESSAY III.

OF WAR, CONSIDERED IN RESPECT OF ITS CAUSES AND CONSEQUENCES.

WAR is mischief upon the largest scale. It might seem at first sight, that to inquire into the causes of war would be the same thing as to inquire into the causes of criminality, and that in the one case as in the other, the source of it is to be looked for in the nature of man, — in the self-regarding, the dissocial, and now and then, in some measure, in the social affections. A nearer view, however, will show in several points considerable difference, — these differences turn on the magnitude of the scale. The same motives will certainly be found operating in the one case as in the other; but in tracing the process from the original cause to the ultimate effect, a variety of intermediate considerations will present themselves in the instance of war, which have no place in the quarrels of individuals.

Incentives to war will be found in the war-admiring turn of histories, particularly ancient histories, in the prejudices of men, the notion of natural rivalry and repugnancy of interests, confusion between *meum* and *tuum* — between private ownership and public sovereignty, and the notion of punishment, which, in case of war, can never be other than vicarious.

In ancient times there was one system of inducements, under the feudal system another, and in modern times another.

The following may be enumerated among the inducements to war: — Apprehension of injustice — hope of plunder of moveables by individuals — hope of gain by raising contributions — hope of gain by sale or ransom of captives — national pride or glory — monarchical pride — national antipathy — increase of patronage — hope of preferment.

States have no persons distinct from the persons of individuals; but they have property, which is the property of the state, and not of individuals.

When an individual has a dispute about property with an individual, or has sustained what he looks upon as an injury in respect of his property from an individual, he applies for redress to their common superior, the judicial power of the state. When a state has sustained what it looks upon as an injury, in respect of property, from another state — there being no common superior ready chosen for them — it must either submit to the injury, or get the other state to join in the appointment of a common judge, or go to war.

Every state regards itself as bound to afford to its own subjects protection, so far as it is in its power, against all injuries they may sustain either from the subjects or the government of any other state. The utility of the disposition to afford such protection is evident, and the existence of such disposition no less so. Accordingly, if any individual subject of the state A, receive from a subject of the state B, an injury for which the state B forbears, after due proof and demand, to afford or procure adequate satisfaction, it is to the purpose of responsibility, the same thing as if the state B itself, in the persons of the members of its government, had done the injury.

The following may be set down as the principal causes or occasions of war, with some of the means of prevention: —

I. Offences real or pretended of the citizens of one state, towards the citizens of another state, caused by the interests of the citizens —

1. Injuries in general. *Means of prevention:* — Liquidation of the pretensions of the subjects of every sovereign, with regard to the subjects of every other sovereign.

2. Occasional injuries from rivalry in commerce: interception of the rights of property. *Means of prevention:* — General liberty of commerce.

II. Offences, real or pretended, of the citizens of one state towards the citizens of another state, caused by the interests or pretensions of sovereigns: —

1. Disputes respecting the right of succession. *Means of prevention:* — Liquidation of titles: perfecting the style of the laws.

2. Disputes respecting boundaries, whether physical or ideal. *Means of prevention:* — Liquidation of titles: amicable demarcations positively made: perfecting of the style of the laws: regulation.

3. Disputes arising from violations of territory.

4. Enterprizes of conquest. *Means of prevention:* — Confederations of defence: alliances defensive: general guarantees.

5. Attempts at monopoly in commerce: Insolence of the strong towards the weak: tyranny of one nation towards another. *Means of prevention:* — Confederations defensive: conventions limiting the number of troops to be maintained.

No one could regard treaties implying positive obligations in this kind as chimerical; yet, if these are not so, those implying negative obligation are still less so. There may arise difficulty in maintaining an army; there can arise none in not doing so.

It must be allowed that the matter would be a delicate one: there might be some difficulty in persuading one lion to cut his claws; but if the lion, or rather the enormous condor which holds him fast by the head, should agree to cut his talons also, there would be no disgrace in the stipulation: the advantage or inconvenience would be reciprocal.

Let the cost of the attempt be what it would, it would be amply repaid by success. What tranquillity for all sovereigns! — what relief for every people! What a spring would not the commerce, the population, the wealth of all nations take, which are at present confined, when set free from the fetters in which they are now held by the care of their defence!

6. Fear of conquests. *Means of prevention:* — Defensive confederations.

7. Disputes respecting new discoveries — respecting the limits of acquisitions made by one state at the expense of another, on the ground of peaceful occupation. *Means of prevention:* — Previous agreement on the subject of possible discoveries.

8. Part taken in intestine troubles.

The refusal of a foreign power to recognise the right of a newly-formed government, has been a frequent cause of war; but no interest being at stake on either side, nothing so much as proposed to be gained, it is evident, that on both sides, whatever mischief is produced, is so much misery created in waste.

9. Injuries caused on account of religion. The difference between religion and no religion, however grating, is not nearly so irritating as that between one religion and another. *Means of prevention:* — Progress of toleration.

10. Interest of ministers. *Means of prevention:* — Salaries determinate, but effective.

Wars may be: —

I. *Bonâ fide* wars. A remedy against these would be found in "The Tribunal of Peace."*

II. Wars of passion. The remedy against these, — Reasoning, showing the repugnancy betwixt passion on the one hand, and justice as well as interest on the other.

III. Wars of ambition, or insolence, or rapine. The remedies against these are — 1. Reasoning, showing the repugnancy betwixt ambition and true interest; 2. Remedies of regulation, in the event of a temporary ascendency on the part of reason.

In all these cases, the utility with regard to the state which looks upon itself as aggrieved — the reasonableness in a word, of going to war with the aggressor — depends partly upon his relative force, partly upon what appears to have been the state of his mind with relation to the injury. If it be evident that there was no *mala fides* on his part, it can never be for the advantage of the aggrieved state to have recourse to war, whether it be stronger or weaker than the aggressor, and that in whatever degree; — in that case, be the injury what it will, it may be pronounced impossible that the value of it should ever amount to the expense of war, be it ever so short, and carried on upon ever so frugal a scale.

In case of *mala fides*, whether even then it would be worth while to have recourse to war, will depend upon circumstances. If it appear that the injury in question is but a prelude to others, and that it proceeds from a disposition which nothing less than entire destruction can satisfy, and war presents any tolerable chance of success, how small soever, prudence and reason may join with passion in prescribing war as the only remedy in so desperate a disease. For, though in case of perseverance on the part of the assailant, successful resistance may appear impossible; yet resistance, such as can be opposed, may, by gaining time, give room for some unexpected incident to arise, and may at any rate, by the inconvenience it occasions to the assailant, contribute in time or loss, to weaken the mass of inducements which prompt him to similar enterprises. Though the Spartans at Thermopylæ perished to a man, yet the defence of Thermopylæ was not without its use.

If, on the other hand, the aggression, though too flagrant not to be accompanied with *mala fides*, appear to have for its origin some passion or caprice which has for its incentive some limited object, and promises to be contented with that object, — the option is now, not between ruin avenged and unavenged, but between the loss of the object, whatever it be, and the miseries of a more or less hopeless war.

The Dutch displayed prudence, while they yielded to the suggestions of indignation, in defending themselves against the force of Spain. The same people displayed their prudence in yielding to Britain the frivolous honours of the flag, at the end of the war of 1652; they would have displayed still more, if they had made the same concession at the beginning of it.

Lastly, if the aggression, how unjust soever it may appear, when viewed in the point of view in which it is contemplated by the state which is the object of it, does not appear accompanied with *mala fides* on the part of the aggressor, nothing can be more incontestable than the prudence of submitting to it, rather than encountering the calamities of war. The sacrifice is seen at once in its utmost extent, and it must be singular indeed, if the amount of it can approach to that of the expense of a single campaign.

When war has broken out, a palliative for its evils might perhaps be found in the appointment of war-residents, to provide for prisoners and to prevent violations of the laws of war.

Will it be said, that in quality of a spy such

* See *Essay* IV. p. 546.

residents would be to be feared? An enemy known to be such, could scarcely be a spy. All the proceedings of such residents should be open, and all his letters subjected to inspection.

At present, foreigners are scarcely excluded from an enemy's country — scarcely even military men or ministers; and so soon as it is wished to employ a spy, could not a native be found?

A resident of this character could always be employed as a channel of communication, if an accommodation were desired.

ESSAY IV.

A PLAN FOR AN UNIVERSAL AND PERPETUAL PEACE.

THE object of the present Essay is to submit to the world a plan for an universal and perpetual peace. The globe is the field of dominion to which the author aspires, — the press the engine, and the only one he employs, — the cabinet of mankind the theatre of his intrigue.

The happiest of mankind are sufferers by war; and the wisest, nay, even the least wise, are wise enough to ascribe the chief of their sufferings to that cause.

The following plan has for its basis two fundamental propositions: — 1. The reduction and fixation of the force of the several nations that compose the European system; 2. The emancipation of the distant dependencies of each state.* Each of these propositions has its distinct advantages; but neither of them, it will appear, would completely answer the purpose without the other.

As to the utility of such an universal and lasting peace, supposing a plan for that purpose practicable, and likely to be adopted, there can be but one voice. The objection, and the only objection to it, is the apparent impracticability of it; — that it is not only hopeless, but that to such a degree that any proposal to that effect deserves the name of visionary and ridiculous. This objection I shall endeavour in the first place to remove; for the removal of this prejudice may be necessary to procure for the plan a hearing.

What can be better suited to the preparing of men's minds for the reception of such a proposal than the proposal itself?

Let it not be objected that the age is not ripe for such a proposal: the more it wants of being ripe, the sooner we should begin to do what can be done to ripen it; the more we should do to ripen it. A proposal of this sort, is one of those things that can never come too early nor too late.

Who that bears the name of Christian can refuse the assistance of his prayers? What pulpit can forbear to second me with its eloquence, — Catholics and Protestants, Church-of-England-men and Dissenters, may all agree in this, if in nothing else. I call upon them all to aid me with their countenance and their support.

The ensuing sheets are dedicated to the common welfare of all civilized nations; but more particularly of Great Britain and France.

The end in view is to recommend three grand objects, — simplicity of government, national frugality, and peace.

Reflection has satisfied me of the truth of the following propositions: —

I. That it is not the interest of Great Britain to have any foreign dependencies whatsoever.

II. That it is not the interest of Great Britain to have any treaty of alliance, offensive or defensive, with any other power whatever.

III. That it is not the interest of Great Britain to have any treaty with any power whatsoever, for the purpose of possessing any advantage whatsoever in point of trade, to the exclusion of any other nation whatsoever.

IV. That it is not the interest of Great Britain to keep up any naval force beyond what may be sufficient to defend its commerce against pirates.

V. That it is not the interest of Great Britain to keep on foot any regulations whatsoever of distant preparation for the augmentation or maintenance of its naval force; such as the Navigation Act, bounties on the Greenland trade, and other trades regarded as nurseries for seamen.

VI. VII. VIII. IX. & X. That all these several propositions are also true of France.

As far as Great Britain is concerned, I rest the proof of these several propositions principally upon two very simple principles.

I. That the increase of growing wealth in every nation in a given period, is necessarily limited by the quantity of capital it possesses at that period.

II. That Great Britain, with or without Ireland, and without any other dependency, can have no reasonable ground to apprehend injury from any one nation upon earth.

Turning to France, I substitute to the last of the two just-mentioned propositions the following: —

III. That France, standing singly, has at present nothing to fear from any other nation than Great Britain: nor, if standing clear of her foreign dependencies, would she have any thing to fear from Great Britain.

* Two original writers have gone before me in this line, Dean Tucker and Dr. Anderson. The object of the first was to persuade the world of the inutility of war, but more particularly of the war then raging when he wrote; the object of the second to show the inutility of the colonies.

XI. That supposing Great Britain and France thoroughly agreed, the principal difficulties would be removed to the establishment of a plan of general and permanent pacification for all Europe.

XII. That for the maintenance of such a pacification, general and perpetual treaties might be formed, limiting the number of troops to be maintained.

XIII. That the maintenance of such a pacification might be considerably facilitated, by the establishment of a common court of judicature for the decision of differences between the several nations, although such court were not to be armed with any coercive powers.

XIV. That secresy in the operations of the foreign department ought not to be endured in England; being altogether useless, and equally repugnant to the interests of liberty and to those of peace.

Proposition I.—That it is not the interest of Great Britain to have any foreign dependencies whatsoever.

The truth of this proposition will appear if we consider, 1*st*, That distant dependencies increase the chances of war, —

1. By increasing the number of possible subjects of dispute.

2. By the natural obscurity of title in case of new settlements or discoveries.

3. By the particular obscurity of the evidence resulting from the distance.

4. By men's caring less about wars when the scene is remote, than when it is nearer home.

2*d*, That colonies are seldom, if ever, sources of profit to the mother country.

Profitable industry has five branches: — 1. Production of new materials, including agricultures, mining, and fisheries; 2. Manufactures; 3. Home trade; 4. Foreign trade; 5. Carrying trade. The quantity of profitable industry that can be carried on in a country being limited by that of the capital which the country can command, it follows that no part of that quantity can be bestowed upon any one branch, but it must be withdrawn from, or withholden from, all the others. No encouragement, therefore, can be given to any one, but it must be a proportionable discouragement to all the others. Nothing can be done by government to induce a man to begin or continue to employ his capital in any one of those branches, but it must induce him in the same degree to withdraw or withhold that capital from all the rest. Of these five branches, no one is to such a degree more beneficial to the public than the rest, as that it should be worth its while to call forth the powers of law to give it an advantage. But if there were any, it would unquestionably be the improvement and cultivation of land. Every fictitious encouragement to any one of these rival branches being a proportionable discouragement to agriculture. Every encouragement to any of those branches of manufacture which produce articles that are at present sold to the colonies, is a proportionable discouragement to agriculture.

When colonies are to be made out to be beneficial to the mother country, and the quantum of the benefit is to be estimated, the mode in which the estimate is made is curious enough. An account is taken of what they export, which is almost the whole of their produce. All this, it is said, while you have the colonies, is yours; this is exactly what you lose if you lose your colonies. How much of all this is really yours? Not one single halfpenny. When they let you take it from them, do they give it you for nothing? Not they indeed; they make you pay for it just as anybody else would do. How much? Just so much as you would pay them if they belonged to themselves or to anybody else.

For maintaining colonies there are several avowed reasons, besides others which are not avowed: of the avowed reasons, by far the principal one is, the benefit of trade. If your colonies were not subject to you, they would not trade with you; they would not buy any of your goods, or let you buy any of theirs; at least, you could not be sure of their doing so: if they were subject to anybody else they would not do so; for the colonies of other nations are, you see, not suffered to trade with you. Give up your colonies, you give up so much of your trade as is carried on with your colonies. No; we do not give up any such thing, — we do not give up anything whatsoever. Trade with colonies cannot, any more than with anywhere else, be carried on without capital: just so much of our capital as is employed in our trade with the colonies — just so much of it is not employed elsewhere — just so much is either kept or taken from other trades.

Suppose, then, any branch of trade or manufacture to decline — even suppose it lost altogether — is this any permanent loss to the nation? Not the smallest. We know the worst that can happen from any such loss; the capital that would otherwise have been employed in the lost branch will be employed in agriculture. The loss of the colonies, if the loss of the colony trade were the consequence of the loss of the colonies, would at the worst be so much gain to agriculture.

Other reasons against distant dominion may be found in a consideration of the good of the government. Distant mischiefs make little impression on those on whom the remedying of them depends. A single murder committed in London makes more impression than if thousands of murders and other cruelties were committed in the East Indies. The situation of Hastings, only because he was pre-

sent, excited compassion in those who heard the detail of the cruelties committed by him with indifference.

The communication of grievances cannot be too quick from those who feel them to those who have the power to relieve them. The reason which in the old writs the king is made to assign for his interfering to afford relief, is the real cause which originally gave birth to that interference, — it is one of those few truths which have contrived to make their way through the thick cloud of lies and nonsense they contain. "See what it is that these people want," says the sovereign to the ministers of justice, "that I may not any more be troubled with their noise." The motive assigned to the unjust judge in the Gospel, is the motive which the sovereign, who is styled the fountain of justice, is thus made to avow.

The following, then, are the final measures which ought to be pursued: —

1. Give up all the colonies.

2. Found no new colonies.

The following is a summary of the reasons for giving up all the colonies: —

I. Interest of the mother-country.

1. Saving the expense of the establishments, civil and military.

2. Saving the danger of war — 1. For enforcing their obedience; 2. On account of the jealousy produced by the apparent power they confer.

3. Saving the expense of defending them, in case of war on other grounds.

4. Getting rid of the means of corruption afforded by the patronage — 1. Of their civil establishments; 2. Of the military force employed in their defence.

5. Simplifying the whole frame of government, and thereby rendering a competent skill in the business of government more attainable — 1. To the members of administration; 2. To the people.*

The stock of national intelligence is deteriorated by the false notions which must be kept up, in order to prevent the nation from opening its eyes and insisting upon the enfranchisement of the colonies.

At the same time, bad government results to the mother-country from the complication of interests, the indistinct views, and the consumption of time, occasioned by the load of distant dependencies.

II. Interest of the colonies.

Diminishing the chance of bad government resulting from — 1. Opposite interest; 2. Ignorance.

The real interests of the colony must be sacrificed to the imaginary interests of the mother-country. It is for the purpose of governing it badly, and for no other, that you can wish to get or to keep a colony. Govern it well, it is of no use to you. Govern it as well as the inhabitants would govern it themselves, — you must choose those to govern it whom they themselves would choose. You must sacrifice none of its interests to your own, — you must bestow as much time and attention to their interests as they would themselves: in a word, you must take those very measures, and none others, which they themselves would take. But would this be governing? and what would it be worth to you if it were?

After all, it would be impossible for you to govern them so well as they would govern themselves, on account of the distance.†

The following are approximating measures: —

1. Maintain no military force in any of the colonies.

2. Issue no moneys for the maintenance of any civil establishment in any of the colonies.

3. Nominate to the offices in the colonies as long as they permit you; — yield as soon as they contest such nomination.

4. Give general instructions to governors to consent to all acts presented to them.

5. Issue no moneys for fortifications.

---

* Reasons for giving up Gibraltar: —

1. The expense of the military establishment, viz. fortifications, garrisons, ordnance, recruiting service, victualling.

2. The means of corruption resulting from the patronage.

3. The saving the danger of war with Spain, to which the possession of the place is a perpetual provocation.

4. The price that might be obtained from Spain for the purchase of it.

5. Saving the occasional expense of defending it and victualling it in war.

6. The possession of it is useless. It is said to be useful only on account of the Levant trade: — but, 1. We could carry on that trade equally well without Gibraltar. 2. If we could not, we should suffer no loss. The capital employed in that trade would be equally productive if employed in any other. 3. Supposing this the most productive of all trades, yet what we lost by losing Gibraltar would only be equal to the difference between the per centage gained in that trade and the per centage gained in the next most productive trade. For, 4. We could still do as the Swedes, Danes, Dutch, &c., and as we did before we had possession of Gibraltar.

Reasons for giving up the East Indies: —

1. Saving the danger of war.

2. Getting rid of the means of corruption resulting from the patronage, civil and military.

3. Simplifying the government.

4. Getting rid of prosecutions that consume the time of parliament, and beget suspicion of injustice.

5. Preventing the corruption of the morals of the natives by the example of successful rapacity.

† It is in proportion as we see things — as they are brought within the reach of our attention and observation — that we care for them. A minister who would not kill one man with his own hands, does not mind causing the death of myriads by the hands of others at a distance.

Proposition II. — That it is not the interest of Great Britain to have any treaty of alliance, offensive or defensive, with any other power whatever.

Reason: saving the danger of war arising out of them.

And more especially ought not Great Britain to guarantee foreign constitutions.

Reason: saving the danger of war resulting from the odium of so tyrannical a measure.

Proposition III.—That it is not the interest of Great Britain to have any treaty with any power whatsoever, for the purpose of possessing any advantages whatsoever, in point of trade, to the exclusion of any other nation whatsoever.

That the trade of every nation is limited by the quantity of capital is so plainly and obviously true, as to challenge a place among self-evident propositions. But self-evident propositions must not expect to be easily admitted, if admitted at all, if the consequences of them clash with prevalent passions and confirmed prejudices.

Nations are composed of individuals. The trade of a nation must be limited by the same causes that limit the trade of the individual. Each individual merchant, when he has as much trade as his whole capital, and all the credit he can get by means of his capital can suffice for carrying on, can have no more. This being true of each merchant, is not less true of the whole number of merchants put together.

Many books directly recognise the proposition, that the quantity of trade a nation can carry on is limited — limited by the quantity of its capital. None dispute the proposition; but almost all, somewhere or other, proceed upon the opposite supposition; they suppose the quantity of trade to have no limitation whatsoever.

It is a folly to buy manufactured goods; wise to buy raw materials. Why? because you sell them to yourselves, or, what is still better, to foreigners, manufactured; and the manufacturer's profit is all clear gain to you. What is here forgotten is, that the manufacturer, to carry on his business, must have a capital; and that just so much capital as is employed in that way, is prevented from being employed in any other.

Hence the perfect inutility and mischievousness of all laws and public measures of government whatsoever, for the pretended encouragement of trade — all bounties in every shape whatsoever—all non-importation agreements and engagements to consume home manufactures in preference to foreign — in any other view than to afford temporary relief to temporary distress.

But of the two — prohibitions and bounties — penal encouragements and remuneratory — the latter are beyond comparison the most mischievous. Prohibitions, except while they are fresh, and drive men at a great expense out of the employments they are embarked in, are only nugatory. Bounties are wasteful and oppressive: they force money from one man in order to pay another man for carrying on a trade, which, if it were not a losing one, there would be no need of paying him for.

What then, are all modes of productive industry alike? May not one be more profitable than another? Certainly. But the favourite one is it, in fact, more profitable than any other? That is the question and the only question that ought to be put; and that is the very question which nobody ever thinks of putting.

Were it ever put and answered, and answered ever so clearly, it never could be of any use as a ground for any permanent plan of policy. Why? Because almost as soon as one branch is known to be more profitable than the rest, so soon it ceases so to be.— Men flock to it from all other branches, and the old equilibrium is presently restored. Your merchants have a monopoly as against foreigners? True, but they have no monopoly as against one another. Men cannot, in every instance, quit the less productive branch their capitals are already employed in, to throw them into this more productive one? True — but there are young beginners as well as old stagers; and the first concern of a young beginner, who has a capital to employ in a branch of industry, is to look out for the most profitable.

Objection:— Oh! but it is manufacture that creates the demand for the productions of agriculture. You cannot, therefore, increase the productions of agriculture but by increasing manufactures. No such thing. I admit the antecedent — I deny the consequence. Increase of manufactures certainly does create an increase in the demand for the productions of agriculture. Equally certain is it that the increase of manufactures is not necessary to produce an increase in that demand. Farmers can subsist without ribbons, gauzes, or fine cambrics. Weavers of ribbons, gauzes, or fine cambrics, cannot subsist without the productions of agriculture; necessary subsistence never can lose its value. Those who produce it are themselves a market for their produce. Is it possible that provisions should be too cheap? Is there any present danger of it? Suppose (in spite of the extreme absurdity of the supposition) that provisions were growing gradually too cheap, from the increase of the quantity produced, and the want of manufacturers to consume them, what would be the consequence? The increasing cheapness would increase the facility and disposition to marry: it would thence increase the population of the country; and the children thus produced, eating as they grew up, would keep down this terrible evil of a superabundance of provisions.

Provisions, the produce of agriculture, constantly and necessarily produce a market for themselves. The more provisions a man raises, over and above what is necessary for his own consumption, the more he has to give to others, to induce them to provide him with whatever, besides provisions, he chooses to have. In a word, the more he has to spare, the more he has to give to manufacturers; who, by taking it from him, and paying him with the produce of their labours, afford the encouragement requisite for the productions of the fruits of agriculture.

It is impossible, therefore, that you can ever have too much agriculture. It is impossible that while there is ground untilled, or ground that might be better tilled than it is, that any detriment should ensue to the community from the withholding or withdrawing capital from any other branch of industry, and employing it in agriculture. It is impossible, therefore, that the loss of any branch of trade can be productive of any detriment to the community, excepting always the temporary distress experienced by the individuals concerned in it for the time being, when the decline is a sudden one.

The following are the measures the propriety of which results from the above principles:—

1. That no treaties granting commercial preferences should be made.

2. That no wars should be entered into for compelling such treaties.

3. That no alliances should be contracted for the sake of purchasing them.

4. That no encouragements should be given to particular branches of trade, by—

(1.) Prohibition of rival manufactures.

(2.) Taxation of rival manufactures.

(3.) Bounties* on the trade meant to be favoured.

5. That no treaties should be entered into insuring commercial preferences.

They are useless as they add nothing to the mass of wealth; they only influence the direction of it.

Proposition IV.—That it is not the interest of Great Britain to keep up any naval force beyond what may be sufficient to defend its commerce against pirates.

It is unnecessary, except for the defence of the colonies, or for the purposes of war, undertaken either for the compelling of trade or the formation of commercial treaties.

Proposition V.—That it is not the interest of Great Britain to keep on foot any regulations whatsoever of distant preparation for the augmentation or maintenance of its naval force — such as the navigation act, bounties on the Greenland trade, and other trades regarded as nurseries for seamen.

* All bounties on particular branches of trade do rather harm than good.

This proposition is a necessary consequence of the foregoing one.

Propositions VI. VII. VIII. IX. & X.

Propositions similar to the foregoing are equally true applied to France.

Proposition XI. — That supposing Great Britain and France thoroughly agreed, the principal difficulties would be removed to the establishment of a plan of general and permanent pacification for all Europe.

Proposition XII. — That for the maintenance of such a pacification, general and perpetual treaties might be formed, limiting the number of troops to be maintained.†

If the simple relation of a single nation with a single other nation be considered, perhaps the matter would not be very difficult. The misfortune is, that almost everywhere compound relations are found. On the subject of troops,—France says to England, Yes I would voluntarily make with you a treaty of disarming, if there were only you; but it is necessary for me to have troops to defend me from the Austrians. Austria might say the same to France; but it is necessary to guard against Prussia, Russia, and the Porte. And the like allegation might be made by Prussia with regard to Russia.

Whilst as to naval forces, if it concerned Europe only, the difficulty might perhaps not be very considerable. To consider France, Spain and Holland, as making together a counterpoise to the power of Britain,—perhaps on account of the disadvantages which accompany the concert between three separate nations, to say nothing of the tardiness and publicity of procedures under the Dutch Constitution,—perhaps England might allow to all together a united force equal to half or more than its own.

An agreement of this kind would not be dishonourable. If the covenant were on one side only, it might be so. If it regard both parties together, the reciprocity takes away the acerbity. By the treaty which put an end to the first Punic war, the number of vessels that the Carthaginians might maintain was limited. This condition was it not humiliating? It might be: but if it were, it must have been because there was nothing correspondent to it on the side of the Romans. A treaty which placed all the security on one side, what cause could it have had for its source? It could only have had one — that is the avowed superiority of the party thus incontestably secured, — such a condition

† Precedents.—1. Convention of disarmament between France and Britain 1787, — this is a precedent of the measure or stipulation itself; 2. Armed neutrality code, — this is a precedent of the mode of bringing about the measure, and may serve to disprove the impossibility of a general convention among nations; 3. Treaty forbidding the fortifying of Dunkirk.

could only have been a law dictated by the conqueror to the party conquered. The law of the strongest. None but a conqueror could have dictated it; none but the conquered would have accepted it.

On the contrary, whatsoever nation should get the start of the other in making the proposal to reduce and fix the amount of its armed force, would crown itself with everlasting honour. The risk would be nothing—the gain certain. This gain would be, the giving an incontrovertible demonstration of its own disposition to peace, and of the opposite disposition in the other nation in case of its rejecting the proposal.

The utmost fairness should be employed. The nation addressed should be invited to consider and point out whatever further securities it deemed necessary, and whatever further concessions it deemed just.

The proposal should be made in the most public manner:—it should be an address from nation to nation. This, at the same time that it conciliated the confidence of the nation addressed, would make it impracticable for the government of that nation to neglect it, or stave it off by shifts and evasions. It would sound the heart of the nation addressed. It would discover its intentions, and proclaim them to the world.

The cause of humanity has still another resource. Should Britain prove deaf and impracticable, let France, without conditions, emancipate her colonies, and break up her marine. The advantage even upon this plan would be immense, the danger none. The colonies I have already shown are a source of expense, not of revenue, — of burthen to the people, not of relief. This appears to be the case, even upon the footing of those expenses which appear upon the face of them to belong to the colonies, and are the only ones that have hitherto been set down to their account. But in fact the whole expense of the marine belongs also to that account, and no other. What other destination has it? What other can it have? None. Take away the colonies, what use would there be for a single vessel, more than the few necessary in the Mediterranean to curb the pirates.

In case of a war, where at present (1789) would England make its first and only attack upon France? In the colonies. What would she propose to herself from success in such an attack? What but the depriving France of her colonies. Were these colonies — these bones of contention — no longer hers, what then could England do? what could she wish to do?

There would remain the territory of France; with what view could Britain make any attack upon it in any way? Not with views of permanent conquest; — such madness does not belong to our age. Parliament itself, one may venture to affirm, without paying it any very extraordinary compliment, would not wish it. It would not wish it, even could it be accomplished without effort on our part, without resistance on the other. It would not, even though France herself were to solicit it. No parliament would grant a penny for such a purpose. If it did, it would not be a parliament a month. No king would lend his name to such a project. He would be dethroned as surely and as deservedly as James the Second. To say, I will be king of France, would be to say, in other words, I will be absolute in England.

Well, then, no one would dream of conquest. What other purpose could an invasion have? The plunder and destruction of the country. Such baseness is totally repugnant, not only to the spirit of the nation, but to the spirit of the times. Malevolence could be the only motive — rapacity could never counsel it; long before an army could arrive anywhere, everything capable of being plundered would be carried off. Whatever is portable, could be much sooner carried off by the owners, than by any plundering army. No expedition of plunder could ever pay itself.*

Such is the extreme folly, the madness of war: on no supposition can it be otherwise than mischievous, especially between nations circumstanced as France and England. Though the choice of the events were absolutely at your command, you could not make it of use to you. If unsuccessful, you may be disgraced and ruined: if successful, even to the height of your wishes, you are still but so much the worse. You would still be so much the worse, though it were to cost you nothing. For not even any colony of your own planting, still less a conquest of your own making, will so much as pay its own expenses.

The greatest acquisitions that could be conceived would not be to be wished for, — could they even be attained with the greatest certainty, and without the least expense. In war, we are as likely not to gain as to gain

* This brings to recollection the achievements of the war from 1755 to 1763. The struggle betwixt prejudice and humanity produced in conduct a result truly ridiculous. Prejudice prescribed an attack upon the enemy in his own territory, — humanity forbade the doing him any harm. Not only nothing was gained by these expeditions, but the mischief done to the country invaded was not nearly equal to the expense of the invasion. When a Japanese rips open his own belly, it is in the assurance that his enemy will follow his example. But in this instance, the Englishman ripped open his own belly that the Frenchman might get a scratch. Why was this absurdity acted? Because we were at war, — and when nations are at war something must be done, or at least appear to be done; and there was nothing else to be done. France was already stripped of all its distant dependencies.

— as likely to lose as to do either: we can neither attempt the one, nor defend ourselves against the other, without a certain and most enormous expense.

Mark well the contrast. All trade is in its essence advantageous — even to that party to whom it is least so. All war is in its essence ruinous; and yet the great employments of government are to treasure up occasions of war, and to put fetters upon trade.

Ask an Englishman what is the great obstacle to a secure and solid peace, he has his answer ready:—It is the ambition, perhaps he will add, the treachery of France. I wish the chief obstacle to a plan for this purpose were the dispositions and sentiments of France! — were that all, the plan need not long wait for adoption.

Of this visionary project, the most visionary part is without question that for the emancipation of distant dependencies. What will an Englishman say, when he sees two French ministers* of the highest reputation, both at the head of their respective departments, both joining in the opinion, that the accomplishment of this event, nay the speedy accomplishment of it, is inevitable, and one of them scrupling not to pronounce it as eminently desirable.

It would only be the bringing things back on these points to the footing they were on before the discovery of America. Europe had then no colonies — no distant garrisons — no standing armies. It would have had no wars but for the feudal system — religious antipathy — the rage of conquest — and the uncertainties of succession. Of these four causes, the first is happily extinct everywhere — the second and third almost everywhere, and at any rate in France and England — the last might, if not already extinguished, be so with great ease.

The moral feelings of men in matters of national morality are still so far short of perfection, that in the scale of estimation, justice has not yet gained the ascendency over force. Yet this prejudice may, in a certain point of view, by accident, be rather favourable to this proposal than otherwise. Truth, and the object of this essay, bid me to say to my countrymen, it is for you to begin the reformation — it is you that have been the greatest sinners. But the same considerations also lead me to say to them, you are the strongest among nations: though justice be not on your side, force is; and it is your force that has been the main cause of your injustice. If the measure of moral approbation had been brought to perfection, such positions would have been far from popular, prudence would have dictated the keeping them out of sight, and the softening them down as much as possible.

Humiliation would have been the effect produced by them on those to whom they appeared true—indignation on those to whom they appeared false. But, as I have observed, men have not yet learned to tune their feelings in unison with the voice of morality in these points. They feel more pride in being accounted strong, than resentment at being called unjust: or rather, the imputation of injustice appears flattering rather than otherwise, when coupled with the consideration of its cause. I feel it in my own experience; but if *I*, listed as I am as the professed and hitherto the only advocate in my own country in the cause of justice, set a less value on justice than is its due, what can I expect from the general run of men?

Proposition XIII. — That the maintenance of such a pacification might be considerably facilitated, by the establishment of a common court of judicature, for the decision of differences between the several nations, although such court were not to be armed with any coercive powers.

It is an observation of somebody's, that no nation ought to yield any evident point of justice to another. This must mean, evident in the eyes of the nation that is to judge, — evident in the eyes of the nation called upon to yield. What does this amount to? That no nation is to give up anything of what it looks upon as its rights — no nation is to make any concessions. Wherever there is any difference of opinion between the negociators of two nations, war is to be the consequence.

While there is no common tribunal, something might be said for this. Concession to notorious injustice invites fresh injustice.

Establish a common tribunal, the necessity for war no longer follows from difference of opinion. Just or unjust, the decision of the arbiters will save the credit, the honour of the contending party.

Can the arrangement proposed be justly styled visionary, when it has been proved of it—that

1. It is the interest of the parties concerned.

2. They are already sensible of that interest.

3. The situation it would place them in is no new one, nor any other than the original situation they set out from.

Difficult and complicated conventions have been effectuated: for examples, we may mention, —

1. The armed neutrality.
2. The American confederation.
3. The German diet.
4. The Swiss league.

Why should not the European fraternity

* Turgot and Vergennes.

subsist, as well as the German diet or the Swiss league? These latter have no ambitious views. Be it so; but is not this already become the case with the former?

How then shall we concentrate the approbation of the people, and obviate their prejudices?

One main object of the plan is to effectuate a reduction, and that a mighty one, in the contributions of the people. The amount of the reduction for each nation should be stipulated in the treaty; and even previous to the signature of it, laws for the purpose might be prepared in each nation, and presented to every other, ready to be enacted, as soon as the treaty should be ratified in each state.

By these means the mass of the people, the part most exposed to be led away by prejudices, would not be sooner apprized of the measure, than they would feel the relief it brought them. They would see it was for their advantage it was calculated, and that it could not be calculated for any other purpose.

The concurrence of all the maritime powers, except England, upon a former occasion, proved two points: the reasonableness of that measure itself, and the weakness of France in comparison with England. It was a measure not of ambition, but of justice — a law made in favour of equality — a law made for the benefit of the weak. No sinister point was gained, or attempted to be gained by it. France was satisfied with it. Why? because she was weaker than Britain; she *could* have no other motive — on no other supposition could it have been of any advantage to her. Britain was vexed at it. Why? For the opposite reason: she could have no other.

Oh my countrymen! purge your eyes from the film of prejudice — extirpate from your hearts the *black specks* of excessive jealousy, false ambition, selfishness, and insolence. The operations may be painful; but the rewards are glorious indeed! As the main difficulty, so will the main honour be with you.

What though wars should hereafter arise? the intermediate savings will not the less be so much clear gain.

Though, in the generating of the disposition for war, unjust ambition has doubtless had by far too great a share, yet jealousy, sincere and honest jealousy, must be acknowledged to have had a not inconsiderable one. Vulgar prejudice, fostered by passion, assigns the heart as the seat of all the moral diseases it complains of; but the principal and more frequent seat is really the head: it is from ignorance and weakness that men deviate from the path of rectitude, more frequently than from selfishness and malevolence. This is fortunate; — for the power of information and reason, over error and ignorance is much greater and much surer than that of exhortation, and all the modes of rhetoric, over selfishness and malevolence.

It is because we do not know what strong motives other nations have to be just, what strong indications they have given of the disposition to be so, how often we ourselves have deviated from the rules of justice,—that we take for granted, as an indisputable truth, that the principles of injustice are in a manner interwoven into the very essence of the hearts of other men.

The diffidence, which forms part of the character of the English nation, may have been one cause of this jealousy. The dread of being duped by other nations — the notion that foreign heads are more able, though at the same time foreign hearts are less honest than our own, has always been one of our prevailing weaknesses. This diffidence has perhaps some connexion with the *mauvaise honte* which has been remarked as commonly showing itself in our behavour, and which makes public speaking and public exhibition in every line a task so much more formidable to us than to other people.

This diffidence may, perhaps, in part be accounted for, from our living less in society, and accustoming ourselves less to mixed companies, than the people of other nations.

But the particular cast of diffidence in question, the apprehension of being duped by foreign powers, is to be referred in part, and perhaps principally, to another cause — the jealousy and slight opinion we entertain of our ministers and public men; we are jealous of them as our superiors, contending against us in the perpetual struggle for power; we are diffident of them as being our fellow-countrymen, and of the same mould as ourselves.

Jealousy is the vice of narrow minds; — confidence the virtue of enlarged ones. To be satisfied that confidence between nations is not out of nature where they have worthy ministers, one need but read the account of the negotiation between De Wit and Temple, as given by Hume. I say, by Hume: — for as it requires negotiators like De Wit and Temple to carry on such a negotiation in such a manner, so it required a historian like Hume to do it justice. For the vulgar among historians know no other receipt for writing that part of history than the finding out whatever are the vilest and basest motives capable of accounting for men's conduct in the situation in question, and then ascribing it to those motives without ceremony and without proof.

Temple and De Wit, whose confidence in each other was so exemplary and so just — Temple and De Wit were two of the wisest as well as most honourable men in Europe. The age which produced such virtue, was, however, the age of the pretended popish plot, and of a thousand other enormities

which cannot now be thought of without horror. Since then, the world has had upwards of a century to improve itself in experience, in reflection, in virtue. In every other line its improvements have been immense and unquestioned. Is it too much to hope that France and England might produce not a Temple and a De Wit,—virtue so transcendent as theirs would not be necessary,—but men who, in happier times, might achieve a work like theirs with less extent of virtue.

Such a Congress or Diet might be constituted by each power sending two deputies to the place of meeting; one of these to be the principal, the other to act as an occasional substitute.

The proceedings of such Congress or Diet should be all public.

Its power would consist,—1. In reporting its opinion;

2. In causing that opinion to be circulated in the dominions of each state.

Manifestoes are in common usage. A manifesto is designed to be read either by the subjects of the state complained of, or by other states, or by both. It is an appeal to them. It calls for their opinion. The difference is, that in that case nothing of proof is given; no opinion regularly made known.

The example of Sweden is alone sufficient to show the influence which treaties, the acts of nations, may be expected to have over the subjects of the several nations, and how far the expedient in question deserves the character of a weak one, or the proposal for employing and trusting to it, that of a visionary proposal.

The war commenced by the king of Sweden against Russia, was deemed by his subjects, or at least a considerable part of them, offensive, and as such, contrary to the constitution established by him with the concurrence of the states. Hence a considerable part of the army either threw up their commissions or refused to act; and the consequence was, the king was obliged to retreat from the Russian frontier and call a diet.

This was under a government, commonly, though not truly, supposed to be changed from a limited monarchy, or rather aristocracy, to a despotic monarchy. There was no act of any recognised and respected tribunal to guide and fix the opinion of the people. The only document they had to judge from was a manifesto of the enemy, couched in terms such as resentment would naturally dictate, and therefore none of the most conciliating, — a document which had no claim to be circulated, and of which the circulation, we may be pretty well assured, was prevented as much as it was in the power of the utmost vigilance of the government to prevent it.

3. After a certain time, in putting the refractory state under the ban of Europe

There might, perhaps, be no harm in regulating, as a last resource, the contingent to be furnished by the several states for enforcing the decrees of the court. But the necessity for the employment of this resource would, in all human probability, be superseded for ever by having recourse to the much more simple and less burthensome expedient, of introducing into the instrument by which such court was instituted, a clause guaranteeing the liberty of the press in each state, in such sort, that the diet might find no obstacle to its giving, in every state, to its decrees, and to every paper whatever which it might think proper to sanction with its signature, the most extensive and unlimited circulation.

Proposition XIV.—That secresy in the operations of the foreign department in England ought not to be endured, being altogether useless, and equally repugnant to the interests of liberty and peace.

The existence of the rule which throws a veil of secresy over the transactions of the Cabinet with foreign powers, I shall not take upon me to dispute — my objection is to the propriety of it.

Being asked in the House of Lords by Lord Stormont* about secret articles, the minister for foreign affairs refuses to answer. I blame him not. Subsisting rules, it seems to be agreed, forbid reply. They throw a general veil of secresy over the transactions of the Cabinet with foreign powers. I blame no man for the fault of the laws. It is these laws that I blame as repugnant to the spirit of the constitution, and incompatible with good government.

I take at once the boldest and the broadest ground — I lay down two propositions: —

1. That in no negociation, and at no period of any negociation, ought the negociations of the cabinet in this country to be kept secret from the public at large; much less from parliament and after inquiry made in parliament.†

2. That whatever may be the case with preliminary negociations, such secresy ought never to be maintained with regard to treaties actually concluded.

In both cases, to a country like this, such secresy is equally mischievous and unnecessary.

It is mischievous. Over measures of which you have no knowledge, you can apply no controul. Measures carried on without your knowledge you cannot stop, — how ruinous soever to you, and how strongly soever you would disapprove of them if you knew them. Of negociations with foreign powers carried

* May 22, 1789.

† It lies upon the other side, at least, to put a case in which want of secresy may produce a specific mischief.

on in time of peace, the principal terminations are treaties of alliance, offensive or defensive, or treaties of commerce. But by one accident or other, everything may lead to war.

That in new treaties of commerce as such, there can be no cause for secresy, is a proposition that will hardly be disputed. Only such negociations, like all others, may eventually lead to war, and everything connected with war, it will be said, may come to require secresy.

But rules which admit of a minister's plunging the nation into a war against its will, are essentially mischievous and unconstitutional.

It is admitted that ministers ought not to have it in their power to impose taxes on the nation against its will. It is admitted that they ought not to have it in their power to maintain troops against its will. But by plunging it into war without its knowledge they do both.

Parliament may refuse to carry on a war after it is begun: — Parliament may remove and punish the minister who has brought the nation into a war.

Sorry remedies these; add them both together, their efficacy is not worth a straw. Arrestment of the evil, and punishment of the authors, are sad consolations for the mischief of a war, and of no value as remedies in comparison with prevention. Aggressive war is a matter of choice: defensive, of necessity. Refusal of the means of continuing a war is a most precarious remedy, a remedy only in name. What, when the enemy is at your doors, refuse the materials for barricading them?

Before aggression, war or no war depends upon the aggressor; — once begun, the party aggrieved acquires a vote: He has his negative upon every plan for terminating the war. — What is to be done? Give yourself up without resistance to the mercy of a justly exasperated enemy? But this or the continuance of the war, is all the choice that is now left. In what state of things can this remedy be made to serve? Are you unsuccessful? — the remedy is inapplicable. Are you successful? — nobody will call for it.

Punishment of the authors of the war, punishment whatever it may be to the personal adversaries of the ministers, is no satisfaction to the nation. This is self-evident; but what is closer to the purpose and not less true, is, that in a case like this, the fear of punishment on such an account is no check to them: of a majority in parliament they are in possession, or they would not be ministers. That they should be abandoned by this majority is not in the catalogue of events that ought to be looked upon as possible: but between abandoning them and punishing them, there is a wide difference. Lord North was abandoned in the American war: he was not punished for it. His was an honest error in judgment, unstained by any *malâ fide* practice, and countenanced by a fair majority in parliament. And so may any other impolitic and unjust war be. This is not a punishing age. If bribe-taking, oppression, peculation, duplicity, treachery, every crime that can be committed by statesmen sinning against conscience, produce no desire to punish, what dependence can be placed on punishment in a case where the mischief may so easily happen without any ground for punishment? Mankind are not yet arrived at that stage in the track of civilization. Foreign nations are not yet considered as objects susceptible of an injury. For the citizens of other civilized nations, we have not so much feeling as for our negroes. There are instances in which ministers have been punished for making peace* — there are none where they have been so much as questioned for bringing the nation into war; and if punishment had been ever applied on such an occasion, it would be not for the mischief done to the foreign nation, but purely for the mischief brought upon their own; not for the injustice, but purely for the imprudence.

It has never been laid down as a rule that you should pay any regard to foreign nations: it has never been laid down that you should stick at anything which would give you an advantage in your dealings with foreign nations. On what ground could a minister be punished for a war, even the most unsuccessful, brought on by any such means? I did my best to serve you, he would say — the worse the measure was for the foreign nation, the more I took upon me: the greater therefore the zeal I showed for your cause: the event has proved unfavourable. Are zeal and misfortune to be represented as crimes?

A war unjust on the part of our own nation, by whose ministers it is brought on, can never be brought on but in pursuit of some advantage which, were it not for the injustice towards the foreign nation it would be for our interests to pursue. The injustice

* The fate of Queen Anne's last ministry may be referred in some degree to this cause: and owing to the particular circumstances of their conduct they perhaps deserved it. — See the Report of the Secret Committee of the House of Commons in the year 1715. The great crime of the Earl of Bute was making peace. The Earl of Shelburne was obliged to resign for having made peace. The great crime of Sir R. Walpole was keeping the peace. The nation was become tired of peace. Walpole was reproached with proposing half-a-million in the year for secret-service money. His errors were rectified — war was made — and in one year there was laid out in war four times what he had spent in the ten years before.

and the danger of retaliation being on all hands looked upon as nothing, the plea of the minister would always be, — "It was *your* interest I was pursuing." And the uninformed and unreflecting part of the nation, that is, the great body of the nation would echo to him, — "Yes, it was our interest you were preserving." The voice of the nation on these subjects can only be looked for in newspapers. But on these subjects the language of all newspapers is uniform:—"It is we that are always in the right, without a possibility of being otherwise. Against us other nations have no rights. If according to the rules of judging between individual and individual, we are right—we are right by the rules of justice: if not, we are right by the laws of patriotism, which is a virtue more respectable than justice."— Injustice, oppression, fraud, lying, whatever acts would be crimes, whatever habits would be vices, if manifested in the pursuit of individual interests, when manifested in pursuit of national interests, become sublimated into virtues. Let any man declare who has ever read or heard an English newspaper, whether this be not the constant tenor of the notions they convey. Party on this one point makes no difference. However hostile to one another on all other points, on this they have never but one voice —they write with the utmost harmony. Such are the opinions, and to these opinions the facts are accommodated as of course. Who would blush to misrepresent, when misrepresentation is a virtue?

But newspapers, if their voice make but a small part of the voice of the people, the instruction they give makes on these subjects the whole of the instruction which the people receive.

Such being the national propensity to error on these points, and to error on the worst side, the danger of parliamentary punishment for misconduct of this kind must appear equivalent to next to nothing, even in the eyes of an unconcerned and cool spectator. What must it appear then in the eyes of ministers themselves, acting under the seduction of self-partiality, and hurried on by the tide of business? No; the language which a minister on such occasions will hold to himself will be uniformly this,—"In the first place what I do is not wrong: in the next place, if it were, nothing should I have to fear from it."

Under the present system of secresy, ministers have, therefore, every seduction to lead them into misconduct; while they have no check to keep them out of it. And what species of misconduct? That in comparison of which all others are but peccadillos. Let a minister throw away £30,000 or £40,000 in pensions to his creatures. Let him embezzle a few hundred thousand for himself. What is that to fifty or a hundred millions, the ordinary burthen of a war? Observe the consequence. This is the department of all others in which the strongest checks are needful; at the same time, thanks to the rules of secresy of all the departments, this is the only one in which there are no checks at all. I say, then, the conclusion is demonstrated. The principle which throws a veil of secresy over the proceedings of the foreign department of the cabinet is pernicious in the highest degree, pregnant with mischiefs superior to everything to which the most perfect absence of all concealment could possibly give rise.

There still remains a sort of inexplicit notion which may present itself as secretly furnishing an argument on the other side. Such is the condition of the British nation: peace and war may be always looked upon as being to all human probability in good measure in her power. When the worst comes to the worst, peace may always be had by some unessential sacrifice. I admit the force of the argument: what I maintain is that it operates in my favour. Why? It depends upon two propositions, — the matchless strength of this country, and the uselessness of her foreign dependencies. I admit both. But both operate as arguments in my favour. Her strength places her above the danger of surprise, and above the necessity of having recourse to it to defend herself. The uselessness of her foreign dependencies prove *a fortiori*, the uselessness of engaging in wars for their protection and defence. If they are not fit to keep without war, much less are they worth keeping at the price of war. The inutility of a secret cabinet is demonstrated by this short dilemma. For offensive measures, cabinet secresy can never be necessary to this nation; for defence it can never be necessary to any.

My persuasion is that there is no state whatever in which any inconveniences capable of arising from publicity in this department would not be greatly overbalanced by the advantages; be the state ever so great or ever so small; ever so strong or ever so weak; be its form of government pure or mixed, single or confederated, monarchical, aristocratical, or democratical. The observations already given seem in all these cases sufficient to warrant the conclusion.

But in a nation like Britain, the safety of publicity, the inutility of secresy in all such business, stands upon peculiar grounds. Stronger than any two other nations, much stronger of course than any *one*, its superiority deprives it of all pretence of necessity of carrying points by surprise. Clandestine surprise is the resource of knavery and fear, of unjust ambition combined with weakness. Her matchless power exempts her from the one; her interest, if her servants could be

Newspapers tend to be over supportive of rights of own nation over against others

556 - left column 1/3 down

...oty ...aming to ... all the value that in ... British robber such booty can ... to anybody. The privilege of paying ...or the horse and pistols is all that would be ours. The booty would be employed in corrupting our confidential servants: and this is the full and exact amount of what we should get by it.

Conquests made by New Zealanders have some sense in them; while the conquered fry, the conquerers fatten. Conquests made by the polished nations of antiquity, — conquests made by Greeks and Romans, — had some sense in them. Lands, moveables, inhabitants, everything went into the pocket. The invasions of France in the days of the Edwards and the Henrys, had a rational object. Prisoners were taken, and the country was stripped to pay their ransom. The ransom of a single prisoner, a Duke of Orleans, exceeded one-third of the national revenue of England.

Conquests made by a modern despot of the continent have still some sense in them. The new property being contiguous, is laid on to his old property; the inhabitants, as many as he thinks fit to set his mark upon, go to increase his armies; their substance, as much as he thinks fit to squeeze from them, goes into his purse.

Conquests made by the British nation would be violations of common sense, were there no such thing as justice. They are bungling imitations of miserable originals, bating the essential circumstances. Nothing but confirmed blindness and stupidity can prompt us to go on imitating Alexander and Cæsar, and the New Zelanders, and Catherine and Frederic, without the profit.

If it be the king alone who gets the appointment to the places, it is a part of the nation, it may be said, that gets the benefit of having them. A precious lottery! Fifty or one hundred millions the cost of the tickets. Some many years purchase of ten or twenty thousand a-year, the value of the prizes. This if the scheme succeed: — what if it fail?

I do not say there are no sharers in the plunder: — it is impossible for the head of a kingdom to put the whole of it into his own pocket. All I contend for is, that robbery by wholesale is not so profitable as by retail: — if the whole gang together pick the pockets of strangers to a certain amount, the ringleaders pick the pockets of the rest to a much greater. Shall I or shall I not succeed in persuading my countrymen that it is not their interest to be thieves?

"Oh, but you mistake!" cries somebody, "we do not now make war for conquests, but for trade." More foolish still. This is a still worse bargain than before. Conquer the whole world, it is impossible you should increase your trade one halfpenny: — it is impossible you should do otherwise than diminish it. Conquer little or much, you pay for it by taxes: — but just so much as a merchant pays in taxes, just so much he is disabled from adding to the capital he employs in trade. Had you two worlds to trade with, you could only trade with them to the amount of your capital, and what credit, you might meet with on the strength of it. This being true of each trader, is so of all traders. Find a fallacy in this short argument if you can. If you obtained your new right of trading given you for nothing, you would not be a halfpenny the richer: if you paid for them by war or preparations for war; by just so much as you paid for these you would be the poorer.

The good people of England, along with the right of self-government, conquered prodigious right of trade. The revolution was to produce for them not only the blessings of security and power, but immense and sudden wealth. Year has followed after year, and to their endless astonishment, the progress to wealth has gone on no faster than before. One piece of good fortune still wanting, they have never thought of: — that on the day their shackles were knocked off, some kind sylph should have slipped a few thousand pounds into every man's pocket. There is no law against my flying to the moon. Yet I cannot get there. Why? Because I have no wings. What wings are to flying, capital is to trade.

There are two ways of making war for trade, — forcing independent nations to let you trade with them, and conquering nations, or pieces of nations, to make them trade with

you. The former contrivance is to appearance the more easy, and the policy of it the more refined. The latter is more in the good old way, and the king does his own business and the nation's at the same time. He gets the naming to the places: and the nation cannot choose but join with him, being assured that it is all for the sake of getting them the trade. The places he lays hold of, good man, only out of necessity, and that they may not go a-begging: — on his own account, he has no more mind for them than a new-made bishop for the mitre, or a new-made speaker for the chair. To the increase of trade, both these plans of war equally contribute. What you get in both cases is the pleasure of the war.

The legal right of trading to part of America was conquered by France from Britain in the last war. What have they got by it? They have got Tobago, bankruptcy, and a revolution, for their fifty millions. Ministers, who to account for the bankruptcy are forced to say something about the war, call it a national one: — the king has not got by it, — therefore the nation has. What has it got? A fine trade, were there but capital to carry it on. With such room for trade, how comes there to be no more of it? This is what merchants and manufacturers are putting themselves to the torture to account for. The sylph so necessary elsewhere, was still more necessary to France; since, over and above her other work, there was the fifty millions spent in powder and shot to replace.

The King of France, however, by getting Tobago, probably obtained two or three thousand pounds worth of places to give away. This is what he got, and this is all that anybody got for the nation's fifty millions. Let us go on as we have begun, strike a bold stroke, take all their vessels we can lay hold of without a declaration of war, and who knows but what we may get it back again. With the advantages we now have over them, five times the success they are so pleased with, would be but a moderate expectation. For every fifty millions thus laid out, our king would get in places to the amount, not of two or three thousand pounds only, but say of ten, fifteen, or twenty thousand pounds. All this would be prodigious glory — and fine paragraphs and speeches, thanksgivings, and birth-day odes, might be sung and said for it: but for economy, I would much rather give the king new places to the same amount at home, if at this price his ministers would sell us peace.

The conclusion is, that as we have nothing to fear from any other nation or nations, nor want anything from other nations, we can have nothing to say to other nations, nor to hear from them, — that might not be as public as any laws. What then is the veil of secresy that enwraps the proceedings of the cabinet? A mere cloak for wickedness and folly — a dispensation to ministers to save them from the trouble of thinking — a warrant for playing all manner of mad and silly pranks, unseen and uncontrouled — a licence to play at hazard with their fellows abroad, staking our lives and fortunes upon the throw.

What, then, is the true use and effect of secresy? That the prerogatives of place may furnish an aliment to petty vanity, — that the members of *the circulation* may have as it were a newspaper to themselves, — that under favour of the monopoly, ignorance and incapacity may put on airs of wisdom, — that a man, unable to write or speak what is fit to be put into a newspaper, may toss up his head and say, I don't read newspapers — as if a parent were to say I don't trouble my head about schoolmasters, — and that a minister, secure from scrutiny in that quarter, may have the convenient opportunity, upon occasion, of filling the posts with obsequious cyphers, instead of effective men: — anything will do to make a minister whose writing may be written for him, and whose duty in speaking consists in silence.

This much must be confessed: — if secresy as against the nation be useless and pernicious to the nation, it is not useless and pernicious with regard to its servants. It forms part of the *douceurs* of office — a perquisite which will be valued in proportion to the insignificance of their characters and the narrowness of their views. It serves to pamper them up with notions of their own importance, and to teach the servants of the people to look down upon their masters.

Oh! — but if everything that were written were liable to be made public, were published, who would treat with you abroad? Just the same persons as treat with you at present. Negotiations, for fear of misrepresentation, would perhaps be committed somewhat more to writing than at present; — and where would be the harm? The king and his ministers might not have quite such such copious accounts, true or false, of the tittle-tattle of each court: or they must put into different hands the tittle-tattle, and the real business. And suppose your head servants were not so minutely acquainted with the mistresses and buffoons of kings and their ministers, — what matters it to you as a nation, who have no intrigues to carry on, no petty points to compass?

It were an endless task to fill more pages with the shadows that might be conjured up in order to be knocked down. I leave that task to any that will undertake it. I challenge party men — I invite the impartial lovers of their country and mankind to discuss the question — to ransack the stores of history, and imagination as well as history, for cases actual or possible, in which the want of secrecy in this line of business can be

shown to be attended with any substantial prejudice.

As to the constitution, the question of cabinet-secresy having never been tried by the principles of the constitution, has never received a decision. The good old Tudor and Stuart principles have been suffered to remain unquestioned here. Foreign politics are questions of state. Under Elizabeth and James, nothing was to be inquired into — nothing was to be known — everything was matter of state. On other points the veil has been torn away: but with regard to these, there has been a sort of tacit understanding between ministers and people.

Hitherto war has been the national rage: peace has always come too soon, — war too late. To tie up the ministers' hands and make them continually accountable, would be depriving them of numberless occasions of seizing those happy advantages that lead to war: it would be lessening the people's chance of their favourite amusement. For these hundred years past, ministers, to do them justice, have generally been more backward than the people — the great object has rather been to force them into war, than to keep them out of it. Walpole and Newcastle were both forced into war.

It admits of no doubt, if we are really for war, and fond of it for its own sake, we can do no better than let things continue as they are. If we think peace better than war, it is equally certain that the law of secresy cannot be too soon abolished.

Such is the general confusion of ideas — such the power of the imagination — such the force of prejudice — that I verily believe the persuasion is not an uncommon one;—so clear in their notions are many worthy gentlemen, that they look upon war, if successful, as a cause of opulence and prosperity. With equal justice might they look upon the loss of a leg as a cause of swiftness.

Well, but if it be not directly the cause of opulence, it is indirectly; from the successes of war, come, say they, our prosperity, our greatness; thence the respect paid to us by Foreign Powers — thence our security: and who does not know how necessary security is to opulence?

No; war is, in this way, just as unfavourable to opulence as in the other. In the present mode of carrying on war—a mode which it is in no man's power to depart from, security is in proportion to opulence. Just so far then as war is, by its direct effects, unfavourable to opulence, — just so far is it unfavourable to security.

Respect is a term I shall beg leave to change; respect is a mixture of fear and esteem, but for constituting esteem, force is not the instrument, but justice. The sentiment really relied upon for security is fear. By respect then is meant, in plain English, fear. But in a case like this, fear is much more adverse than favourable to security. So many as fear you, join against you till they think they are too strong for you, and then they are afraid of you no longer; — meantime they all hate you, and jointly and severally they do you as much mischief as they can. You, on your part, are not behindhand with them. Conscious or not conscious of your own bad intentions, you suspect theirs to be still worse. Their notion of your intentions is the same. Measures of mere self-defence are naturally taken for projects of aggression. The same causes produce, on both sides, the same effects; each makes haste to begin for fear of being forestalled. In this state of things, if on either side there happen to be a minister or a would-be minister, who has a fancy for war, the stroke is struck, and the tinder catches fire.

At school, the strongest boy may perhaps be the safest. Two or more boys are not always in readiness to join against one. But though this notion may hold good in an English school, it will not bear transplanting upon the theatre of Europe.

Oh! but if your neighbours are really afraid of you, their fear is of use to you in another way — you get the turn of the scale in all disputes. Points that are at all doubtful, they give up to you of course. Watch the moment, and you may every now and then gain points that do not admit of doubt. This is only the former old set of fallacies exhibited in a more obscure form, and which, from their obscurity only, can show as new. The fact is, as has been already shown, there is no nation that has any points to gain to the prejudice of any other. Between the interests of nations, there is nowhere any real conflict: if they appear repugnant anywhere, it is only in proportion as they are misunderstood. What are these points? What points are these which, if you had your choice, you would wish to gain of them? Preferences in trade have been proved to be worth nothing, — distant territorial acquisitions have been proved to be worth less than nothing. When these are out of the question, what other points are there worth gaining by such means.

Opulence is the word I have first mentioned; but opulence is not the word that would be first pitched upon. The repugnancy of the connexion between war and opulence is too glaring: — the term opulence brings to view an idea too simple, too intelligible, too precise. Splendour, greatness, glory, these are terms better suited to the purpose. Prove first that war contributes to splendour and greatness, you may persuade yourself it contributes to opulence, because when you think of splendour you think of opulence. But splendour, greatness, glory, all these fine

things, may be produced by useless success, and unprofitable and enervating extent of dominion obtained at the expense of opulence; and this is the way in which you may manage so as to prove to yourself, that the way to make a man run the quicker is to cut off one of his legs. And true enough it is, that a man who has had a leg cut off, and the stump healed, may hop faster than a man who lies in bed with both legs broken, can walk. And thus you may prove that Britain is in a better case after the expenditure of a glorious war, than if there had been no war; because France or some other country, was put by it into a still worse condition.

In respect, therefore, of any benefit to be derived in the shape of conquest, or of trade —of opulence or of respect—no advantage can be reaped by the employment of the unnecessary, the mischievous, and unconstitutional system of clandestinity and secresy in negotiation.

APPENDIX.*—JUNCTIANA PROPOSAL.

PROPOSALS

FOR THE

JUNCTION OF THE TWO SEAS,—THE ATLANTIC AND THE PACIFIC,

BY MEANS OF A JOINT-STOCK COMPANY,

TO BE STYLED

THE JUNCTIANA COMPANY

CONTENTS.

§ 1. Grounds of expectation respecting the practicability of the proposed junction, ... *page* 561
2. Outline of the proposed agreement for the accomplishment of it, . . . 562
3. Mexico — sacrifices eventually requisite — inducements to compliance, . 563
4. Columbia—her particular inducements to concurrence, ... 566
5. Inducements common to Mexico and Columbia, ... 567
6. Inducements common to Mexico, Columbia, and the Anglo-American United States, — water communication between their ports on the one ocean, and their ports on the other, ... *page* 567
§ 7. In the eyes of capitalists, the proposed protection at the hands of the Anglo-American United States, necessary and satisfactory, ... 568
8. Anglo-American United States,—their inducements for granting the protection requisite, ... 570
9. All other Nations, — their inducements to acquiescence, ... 571

§ 1. *Grounds of expectation respecting the practicability of the proposed junction.*

THE most recent, as well as most determinate grounds, rest, it is believed, on the authority of the work, intituled, "Memoirs of the Mexican Revolution," &c. by William Davis Robinson, in two volumes 8vo, London, 1820: the author, a citizen of the United States, a gentleman of good character, well known to the legation of his own state here in London. In Volume II. Chapter XIII. p. 263 is devoted to this subject.

It speaks (II. 269.) of the measure in question as being known to have been a favourite measure of the last of the two Pitts. It certainly was in the contemplation of General Miranda, whose enterprise was undertaken under the protection of that minister. It was from Miranda that the Edinburgh Review derived the principal part of the information contained in its article on the subject, anno 1810.

Being so long posterior to Humboldt's great work, this of Mr. Robinson speaks of course (p. 265.) of the nine several supposed lines of junction, mentioned in that universally known work: but by Humboldt, in making the number of them so considerable, physical possibility is alone taken into consideration: length of voyage in respect of time, and consequently prospect of net profit, not being taken into the account: to which latter purpose, if the reports given by Mr. Robinson are to be depended upon, the *nine* will be found reduced to *one*.

Nothing can be more encouraging than the expectations held out by this account of his. Three spots, it is true, are mentioned. But of the three, taking the matter upon the face of his account of it, the one from Porto Bello on the Atlantic to Panamá on the Pacific, is decidedly impracticable: *another*, namely from the port formed by the river Guasacualco in the Atlantic, to Tehuantepec in the Pacific, not worth a thought in comparison with the

* The MSS. from which the following work is taken, bear date from 21st to 24th June 1822, and appear to have been prepared for the press under the author's superintendence. As the project brings out a practical illustration of the principles inculcated in the Essays on International Law, it is conceived that the account of it will form a suitable appendix to that work.

third: a chain of mountains running between the two seas, (p. 287,) and the only chance depending on the existence of some *ravine*, deep enough to afford a practicable passage for a cut.

In this third proposed course through the lake of Nicaragua, no mountains are in the way. From the river San Juan (in English St. John,) running from the lake into the Atlantic, it passes on to the Pacific, either through the lake of *Leon*, which by a river communicates with the lake of Nicaragua, or by a direct cut at a less distance.

The information he speaks of as being derived from a number of persons of different descriptions (names not mentioned,) by whom the tract of country in question had been visited. The sum of it is as follows: —

I. Elevation of the land.

Between both lakes and the Pacific, the ground "*a dead level.*"

II. Depth of water on the side of the Atlantic.

	Feet.
1. General depth over the bar at the mouth of St. John's River, . . .	12
2. In a particular part, ...	25
3. Depth in the river after the bar has been crossed, from fathoms 4, making,	24
to fathoms 6, making, ...	36
4. Depth of water in the Nicaragua Lake, from fathoms 3, making, ...	18
to fathoms 8, making, ...	48

5. In the Pacific Ocean, depths of water not stated in figures, but said to be "free from rocks and shoals; in one part," the Papagayo coast, "*the shore so bold, that a frigate may anchor within a few yards of the beach.*"

III. Length of a strait cut at different parts of the above dead level.

1. From Lake Nicaragua to the Pacific, in the Gulph of Papagayo, miles from 21 to 25.
2. From Lake Leon to the Pacific, on the coast of Nicoya, miles from 13 to 15.
3. From the Atlantic into Lake Nicaragua, up the River San Juan, "*Large brigs and schooners sail.*"

Length of a river by which Lake Leon communicates *already* with the sea, "Leagues 8," say miles 24.

Neither in Humboldt's Work, nor in any other as yet published, is any considerable part of the above information (it is believed) to be found.

Under these circumstances, the Nicaragua track seems to be the one, the only one, to which, in the present state of our knowledge here in Europe, the attention of capitalists can be directed, with a view to the formation of any such company as is here proposed.

§ 2. *Outline of the proposed agreement for the accomplishment of it.*

I. Situation and dimensions of the proposed spot.

Taking the conception of the spot from the view given of it in the maps to Pinkerton's Atlas, the greatest tract of territory that would be requisite to be allotted to the purpose would be, that which occupies, *in length*, somewhat less than four degrees of longitude, geographical miles say 220, namely, from the mouth of *St. John's* river in the Pacific; and in breadth, upon an average, a little more than a degree of latitude, geographical miles say a little more than 60. Upon the face of the map, the natural boundaries are, to the north, a chain of lofty mountains; to the south, another such chain, with the exception of the "*dead level*" above spoken of; to the east, the Atlantic; to the west, —in part the chain of mountains, having on the other side of it the territory of Costa Rica, — on other part, the Pacific.

In this tract of country may be seen the *maximum* of what it can be necessary should be ceded to the proposed company; whether, from this quantity, consistently with the accomplishment and perpetual maintenance of the junction for mutual and universal benefit, any and what defalcation can be made, will scarcely be ascertainable, until the necessary surveys have been made and reported.

Whatever may be the site and amount of it, call it for the present *Junctiana.*

II. Proposed source of benefit to the proposed company in a pecuniary shape.

1. The *price of transit*, whatsoever shape or shapes may be given to it: this price being to be received from the masters of all vessels making use of the communication.

2. The absolute property in the land (land covered with water included,) of all this territory, or of what lesser portion of it shall, on report of surveyors, as above, be deemed necessary and sufficient: thence, the right of selling it in parcels, and letting it out upon leases, for building and other purposes.

III. Proposed obligations of the company.

1. To pay to the local authorities a sum in the name of purchase money for the powers of government.

2. To pay the expense of the indemnification due to all such individuals, original inhabitants styled *Indians* included, as possess any interest in whatsoever land comes to be purchased: the value, so paid for, to be the present value only, not any such additional value as may be expected to be derived from the accomplishment of the measure. In case of disagreement, the prices to be referred to arbitration in manner hereinafter to be mentioned.

3. To defray the whole expense of effecting

and keeping up the communication: including, as well necessary *fortifications* towards the two seas, as necessary means of communication of all sorts, such as canals, locks, bridges, tunnels, &c.: and necessary receptacles of all sorts for vessels, such as docks, jetties, &c.

4. In respect of the *price of transit*, as above, the company to admit vessels of all states, at the outset and forever, on exactly the same footing, — the state or states with which the agreement is made, not excepted: no favour, direct or indirect, to be given to any one at the expense of any other state, or of all states.

5. So in respect of purchase and renting of land, as above.

6. Proposition to be made to the Anglo-American United States, to take the Junctiana Territory under their protection, by admitting it into their union: terms, except so far as shall be excepted, the same in principle with those upon which the recently admitted states have been admitted: admitted namely for a time, and while in a state of probation, under the administration of the President of the United States, and as soon as ripe, admitted on the same footing as those other states, and with the same sort of government. Considering the benefit which, in so many shapes, these United States would reap from the accomplishment of the junction, and the honour conferred on their nation by the proposed spontaneous choice, their concurrence seems hardly to be doubted of. As to this point, see § 8.

7. No *slavery*, in any shape, to be allowed: should any vessel, with any slave on board, obtain admittance into the territory, every such slave, upon his entrance within the territory, to be free.

N.B. — It seems essential that, considering the magnitude of the advances which the company would have to make before any returns could be expected, every security which the nature of the case admits of, should be afforded to it: and in particular against any changes to which, in their origin, states so lately emancipated from so bad a form of government, cannot but appear to stand exposed; society and manners, on the part of so large a proportion of the population, being as yet on so unfavourable a footing. As to this point, see § 7.

For the preservation of its rights and powers from injury, the company might stipulate for its having the appointment of a governor of the state so constituted, with a negative upon all laws. But quere as to the need of this? See § 7.

8. The entire *price of transit*, at the rate of so much per ton, to be made known and always kept known to all persons concerned: no enhancement by particular and undeclared collateral charges.

9. The maximum of it to be determined by the agreement between the contracting parties: no enhancement except by mutual consent, in consequence of casual expenses and consequent net loss: expenses, the nature of which will be to be specified in the ultimate agreement.

§ 3. *Mexico—sacrifices eventually requisite—inducements to compliance.*

For the accomplishment of the measure upon the plan here submitted, the following are among the conditions necessary: —

1. That the expense be defrayed — not by the government to which the territory belongs, but by a joint-stock company.

2. That, for their security, the dominion, of the territory through which the communication is made, be ceded to the company.

3. That the dominion so ceded have — not on both sides of it a territory belonging to one and the same government; but, on one side, a territory belonging to one government, namely *Mexico*, — on the other side of it, a territory belonging to another government, namely *Columbia*.

4. That, for security to the capitalists, members of the joint-stock company, as well as for the benefit and satisfaction of all other nations interested, the territory in question be taken under the protection of the *Anglo-American United States*: of all other nations *interested*, — which is as much as to say, of all the other nations of the earth.

On this plan, at the hands of Mexico, certain sacrifices will, on certain suppositions, be requisite.

1. In Mexico, has any such idea yet been entertained, as that of executing the enterprise within her own dominions, and with capital to no greater amount than could be either raised by taxes, or obtained in some way or other from proprietors, subjects of her own government? In Columbia, there seems some ground for supposing that a conception to the like effect may perhaps have been entertained in relation to *herself*; forasmuch as, many months ago, a competent person was sent out from Europe by Columbia to make surveys in this view; and, on any such occasion, its own internal resources are the ways and means which a government would naturally look to, before it thought of extraneous ones.

In Mexico, should a persuasion to this effect have already obtained possession of men's minds, a proposal such as the present seems to have no great prospect of finding acceptance.

The probability, however, seems to be on the negative side.

1. The first point on which this part of the question will turn, is — what is the quantity of capital that will be requisite? As to this point, everything is, it must be confessed, in-

utter darkness. Estimate being as yet altogether out of the question, what remains is loose conjecture, and without anything but the general nature of the enterprise for its ground. On this ground, no professional man would, it is believed, set the expense at less than several millions of pounds sterling — between four and five times as many dollars.

Whatsoever be the amount, thus much is however certain, that the expenditure would require to be kept running on — running on for a length of time, probably for several years, before any the least return for the money could be received.

That any such sum should be raised by taxes — raised by government in its infant, and as yet unsettled state — by taxes over and above all that will be requisite for carrying on the ordinary business of government, is an expectation of a result, which, upon the face of it, does not seem probable.

As to a capital to be raised without taxes — a capital to be furnished by a joint-stock company, having for its members, to an exclusive or principal amount, individuals belonging to the State of Mexico: — the formation of any such company depends upon two conditions: —

1. Upon the existence of capital, to such an amount, at the disposal of individuals.

2. Upon the inability of finding other applications for it, and those of an ordinary nature, that would be still more advantageous: applications, in the instance of which the employment given to it would be under the eye of the proprietor — at the choice of the proprietor — determined on each occasion by the will of the proprietor; and would not, as in this case, have to wait during an indefinite time, for every the smallest return.

If, for example, the information that has been received is correct, fifteen per cent. and more, and with an immediate return, may always be made of capital in *Mexico;* while, by an *English* capitalist, less than ten per cent., if placed upon a footing regarded by him as an assured one, would be caught at; and for this, or something not more than this, if possessed of sufficient means of living from other sources, he would even be content to wait. On the establishment of the London Docks for example, ten per cent. was the maximum looked to; and this was long before the commencement of that state of things, by which the profit capable of being expected from capital, has been of late years so much reduced.

This point being determined upon, if the determination be that a joint-stock company, formed by capitalists of all nations, foreigners as well as natives shall be resorted to; then comes the question about the portion of *territory*, and the *cession* to be made of it.

If the only portion that required to be ceded, were the portion to be purchased by the company for the purpose of the communication, that is to say, the portion through which the work would have to be carried on, thus far no great difficulty presents itself: thus far, by the supposition, Mexico would have her equivalent: the sacrifice would be such as she would be prepared to make: the equivalent, one with which, by the supposition, she would be satisfied.

But the difficulty, if there be any in the case, lies here. It is essential to the plan, that Columbia be not excluded from a share in that benefit which consists in contiguity — immediate contiguity — to the spot through which the communication is made. For this purpose it is necessary that, while on *one* side *Mexico* has the territory immediately contiguous to the territory through which the communication passes, *Columbia* should have the territory immediately contiguous to it on the *other* side. But, according to the latest account that has been made public, viz. Mr. Robinson's, as published in London, anno 1821, there is but one spot that affords any tolerably fair promise of any such junction on profitable terms; and *that* is a spot in which Lake *Nicaragua* is included; and if the information received be correct, not only the contiguous land on the side of *Mexico* is regarded as appertaining to Mexico, but also the contiguous land on the side of Columbia.

If this be not the case, if the claims or expectations of Mexico do not embrace *both* sides, here ends this difficulty: but if they do embrace both sides, then it is that the difficulty will have place; for then it is that by Mexico, according to the plan here proposed, a sacrifice to a certain amount will have to be made.

For its *direct* object, this plan has the securing the establishment of the communication for the benefit of all nations without exception; and more particularly for the benefit of Mexico, Columbia, and the Anglo-American States; these being the three nations to which local proximity will render it in a peculiar degree advantageous. But moreover, for its *collateral* objects it has the prevention of all that ill-will, as between Mexico and Columbia, of which the possession of so great an advantage to Mexico, to the exclusion of Columbia, could scarcely, the nature of man considered, fail of being productive betwixt Mexico and Columbia. With more propriety might it have been said, between Mexico on the one part, and on the other part Columbia, backed by all the other nations of the earth.

This heart-burning, this source of war and disappointment — this it is that presents itself to view as the great natural *stumbling-block* to the undertaking: this stumbling-block it is the principal object of this proposal to remove.

Suppose even that, by her own resources,

and within her own dominions, it were completely in the power of Mexico to establish the communication, still this stumbing-block would remain unremoved; a nation which for a long time, at sea at least, could not but remain a weak one: this weak nation, embarked in a project, presenting a face of injury to all the powers upon earth!

For the sake of *peace* in general, and for the *peace* and *safety* to Mexico in particular, this proposal has therefore for its *main* object, the preventing a possession thus important to all nations, from being endeavoured to be taken for a subject of exclusive property by any nation — to preserve it from becoming a bone of contention to all nations — to preserve it from this fate, by placing it in the conjunct hands of three nations, in the character of trustees for themselves and for all others without exception.

On the supposition, that Mexico has placed herself, and is known to have placed herself, in so dangerous a situation, and that the aid of capital from without is at the same time regarded by her as necessary, would any such capital to any such amount be found?

By capitalists, the danger against which, in this case, adequate security would be looked for, is not merely want of *inclination* to secure to them the stipulated benefits, but want of *ability*. But as to this point in the case supposed, the company would behold itself in a state of dependence, not only on Mexico herself, but on every other power, with which, either on the account here in question, or on any other, Mexico might, at any point of time, however distant, find herself in a state of hostility. Should any such hostility at any time have place (and can it rationally be supposed that it will not at any time have place?) the most prominent object would of course be this matchless jewel, — this matchless key to commercial advantage: the first endeavour would be either to take possession of it, or (as England did by the Washington capital) to destroy it; and in either case, what would be the condition of the company?

Hereupon comes the question — the security here proposed, will it be sufficient? O yes: that it will: this position requires a separate consideration; and the truth of it will be rendered (it is hoped) sufficiently manifest in another place. See § 8.

Upon the plan of universal benefit here proposed, all nations would behold in Mexico a friend. Upon the plan of exclusive benefit to Mexico, this plan of universal benefit being supposed rejected, and known to be rejected, all nations would behold in her an enemy. Upon the plan of universal benefit, all other nations, in their competition with these two nations and one another, are secured against every *disadvantage*, except that which has been established by the hand of nature; that is to say, *local distance*. Upon the plan of exclusive benefit, they would behold themselves exposed at all times to extortion — to extortion blind and boundless: they would look to the *Vistula*, to the *Elbe*, to the *Rhine:* in a word, to all those water communications which in Europe run through different states. All this they would look to; and, in the scene of self-pernicious selfishness, so universally and constantly exhibited in the old world, behold evidence but too conclusive of the like mixture of improbity and folly in the new.

To Columbia, such virtual hostility could scarce fail to be, in a peculiar degree, galling and irritative. To Mexico, to the exclusion of Columbia, the junction would, on this supposition, give the prodigious advantage of a water communication between her own ports in the Atlantic, and her own ports in the Pacific. Meantime, for this same advantage, in the case of Columbia, the demand is equally urgent.

Suppose her next neighbour in possession of it, and herself for ever either destitute of it, or dependent for it on the ever precarious good-will of a foreign state, — the very idea of such a state of things, — could it, consistently with the nature of man, fail to have irritation for its accompaniment? While they themselves are confined to the supremely tedious sea communication round Cape Horn, or to the not much less tedious internal communication up the rapid current of the river Magdalena, with a tedious land-carriage at the end of it — the mercantile men of that already-established republic, with their rulers at their back — is it in the nature of man they should look with other than an evil eye on their rivals in the Mexican state, if in the exclusive possession of so irresistible an instrument for throwing them out of the market?

The Columbians, it is well known to Mexicans, have, for a considerable time past, been regarding this jewel with a proprietary eye. After many unexpected delays, so late as February 1822, a civil engineer went from Europe to make surveys in this view. Exclusion from it would produce in *their* breasts the sensation of a loss. In the breast of *Mexicans*, the *non-acquisition* of it would not produce any such sensation as that of loss. By the acquisition of it, in equal shares, on the here-proposed partnership footing, the sensation of gain would be produced alike on both sides.

In this state of things, supposing the partnership plan rejected, if it were not *really* the interest, it would at any rate *appear* to be the interest, of all classes in the republic of Columbia, to act in a manner more or less declaredly hostile to Mexico — to obstruct the settlement of the government — to foment divisions — to keep the country in such a state of poverty, as should oppose an insuper-

bar to her putting herself in possession of so exclusive and invidious an advantage.

All this while, what should never be out of mind is, that for all these surmises, unpleasant as they are, not any of the parties concerned, but the penner of this proposal, and he alone is answerable. All individuals, on whom any thing depends, being on both sides alike unknown to him, the propensities so universal in human nature constitute the only source whence these indications of probable hostility have been derived.

A much more pleasing object of contemplation to him is the state of amity — cordial and durable amity — which the sort of partnership here proposed could not fail to number among its natural fruits. The infant state would behold in them its common parents. In the Anglo-American union, of whose kindness the Columbian republic has had such recent experience, and at whose hands the Mexican state has so sure an anticipation of the like kindness, they would behold a common friend, and a friend, in case of misunderstanding, whether on these or any other points; a common referee — a referee, such as for impartiality, probity, and sound sense, has assuredly never as yet been matched in the history of nations.

One advantage, however, it must be confessed there is, of which, in this plan, Mexico would put herself exclusively in possession: an advantage in which neither any other nation, nor even Columbia herself, could claim, any the least share. This is the glory of so extraordinary, not to say unexampled, a manifestation of the union of those two virtues, to which all other virtues are reducible — effective benevolence and self-regarding prudence. In fact, it would be nothing more than a sacrifice of personal interest ill understood, to personal interest well understood: still, so difficult to human weakness is every such sacrifice, so imperfectly understood as yet is the connexion between social and personal interest, that the characters of generosity would not the less assuredly stamp themselves, upon the face of the sacrifice, in the most conspicuous and unfading colours.

So much as between Mexico and Columbia. Now, as between Mexico and all other nations.

As, by refusal of this cession, Mexico would stand forth in the eyes of all other nations in the light of an enemy of their common welfare, so by consent to it, she would establish herself in the character — the conspicuous, the indisputable, the indelible character — not simply of a common friend, but of a benefactress — a common, universal, and unexampled benefactress. To her they would behold themselves indebted — not merely for a benefit, but for such a benefit as, unless it were without design or expectation on the part of the benefactor, the nations of the earth, taken in the aggregate, never yet received at the hands of any *one*. Gratitude is therefore an affection, of which, in so far as in minds so situated, any such social affection can have place, she will be an object in all eyes — in the eyes of the present generation, and of all future ones. By Spain, and Spain alone, can any exception to this observation be afforded. But no longer than the present delirium lasts, can this exception last: nations are not, like individuals, exposed to any such lamentable disease, as insanity coeval with existence — insanity beyond the reach of cure.

Howsoever liable to become faint, the colours of national *gratitude* may be, such is not the case with the impression made by respect. Respect is a tribute, which, where really due, not even the bitterest enemy can altogether refuse: and as to *time*, tribute in this shape, so far from being diminished, is even increased by it.

The cession—shall it be gratuitous?—shall it be for a price? — if for a price, by whom paid?—by Columbia in the whole—by the proposed company in the whole?—by Columbia and the proposed company in shares?—and if so, in what shares? Questions, these which of necessity must, in the present stage of the business, be left unanswered.

Thus much, however, may even here be mentioned; namely, that if by Mexico a price is looked for, self-regarding prudence may remain or not remain, — there at any rate ends *benevolence*, — effective benevolence, with whatever glory encircles a virtue of such matchless rarity among nations. There ends that glory to Mexico, and there commences embarrassment and obstruction. On a possession such as that in question, who shall fix a value? On what grounds can it be fixed? With an amount fixed upon without grounds, who will be satisfied? Be it what it may, who will be content to pay it? Meantime, thus much may be answered in the negative, and thence what follows from it in the affirmative. No *preference* must there be, in respect of the *price of transit*. By any such preference, the simplicity of the plan would be destroyed: the merit of it as towards all other nations would be destroyed: in this shape, an advantage could not be given to Mexico by Columbia against herself, without its being given as against all other nations. This shape being set aside, money seems therefore to be the only shape in which, if in any, advantage could on any such score be granted.

§ 4. *Columbia — her particular inducements to concurrence.*

After what has been said on the subject of those inducements which apply to the case of Mexico, next to nothing remains to be said of those which apply to the case of Columbia. On the proposed plan, none present them-

selves, but those in which she will be a sharer with Mexico: of these in the next section.

With regard to Columbia, thus much only remains to be said, namely, that if the glory of the cession is assumed by Mexico, as above, whatsoever net profit, in any more substantial shape, comes to be afforded by it, will fall of course to the share of Columbia.

§ 5. *Inducements common to Mexico and Columbia.*

For the next section is reserved the consideration of the more striking benefit, in which, upon the proposed plan, these two new states will see the old established Republic of the Anglo-American United States sharing with them, and yet without detriment to them, or either of them, in any shape. What remains for the present section will not require many words.

The spot ceded to the company for the formation and security of the communication, will naturally be a seat of new created opulence and population: elements of prosperity, rapidly increasing from the first, and till the spot shall have been incapable of holding any more, for ever on the increase.

A communication in any shape effected, commercial functionaries and agents would immediately repair to it from all nations, and with them or after them, men of all occupations from all nations on both sides of the American continent, the Asiatic, as well as the European. Junctiana, with its two principal towns, one on the Atlantic, the other on the Pacific, would present to every eye the civilized world in miniature.

The hands, of so many various descriptions, of whom in such multitudes the labour would be necessary—the functionaries of the superintending classes, whose presence would be necessary for the giving direction to all that labour — the members of the establishment, civil and military, which, upon a scale of even such perfect frugality, would still be necessary—all these multitudes put together, would form a sensible addition to the active population and circulating wealth of the territory, even from the very commencement of the work.

The narrower the spot thus allotted to the company, the more speedily of course will all this mass of wealth and population begin to run over, and spread itself over the two great states on each side of it. But be that as it may, the frontier on each side can scarce fail to be marked by a flowing tide of the matter of national prosperity in both shapes. Of this influx, so much as is formed by emigrants from other states will, with reference at least to the two states in question, be so much created, as it were out of nothing, and in this advantage no other nation will possess any the least share.

For anything like a clear or correct conception of the advantage derivable to any tract of country, from the accession of settlers in its immediate vicinity, recourse should be had to the state of things in this respect, in the Anglo-American United States, as depictured in the various printed accounts, that have from time to time been given of it, by statistical writers and travellers.

Felicity, in these shapes, has the advantage of presenting determinate conceptions, by being expressed in figures. Benefits, not susceptible of any such precise expression, but of still superior, because of anterior importance — anterior, as being the efficient causes of them—are those which will be derived, in the shape of mental improvement in every line, intellectual and moral together. In the little Republic of *Junctiana*, her two great neighbours, parents as they are to her, would enjoy the benefit of a common school, established under the eyes of both of them: an all-comprehensive school, of everything that is useful in art and science, but more particularly of those things that are most useful, — good legislation, good judicature, good government in every line. This, indeed, supposes and assumes, that the territory of Junctiana will be a member of the Anglo-American United States, and thereby, that the government will be in the only form to which that school can give admittance (see § 7,) for if it be in any other, nothing that is good can be answered for, on any tenable ground.

§ 6. *Inducements common to Mexico, Columbia, and the Anglo-American United States, — water communication between their ports on the one ocean, and their ports on the other.*

Of this benefit little need here be said, after the bare mention of it. Of the matters of fact on which the magnitude of it depends, nothing, in addition to that which the maps indicate, can here be said. To the inhabitants of the several territories, and in particular to those by whom they have been contemplated, with either a political or a commercial eye: to them, and to them almost alone, must the cognizance of this part of the field of consideration be referred.

For the present, and, doubtless, for a long time to come, by Mexico and Columbia will this benefit be possessed in by far the greatest magnitude. With its settlement in the Columbian River that empties itself into the Pacific, the confederation of which *Washington* is the capital, — *Washingtonia*, if for this purpose it may for the moment be called, — will, at the first, be in the state of the hen with one chick. But out of so fertile a womb, say who can, how many more such chicks may not be destined to be poured forth. At any rate, if it be worth while to keep her fed by a frequently interrupted water-carriage,

and at the end of it a land-carriage, over a chain of mountains of 200 miles in length, much more so must it be through a level and unbroken channel, of which dry land forms no part.

In the instance of all three states, this benefit, whatever may be the amount of it, has two mutually contrasted, yet intimately connected, advantages. To these states it belongs *exclusively*, as compared with all other states. At the same time, neither in the eyes of any one of those other states, can it be a ground of complaint, or an object of jealousy. If the act, of which it is the result, were the act of man — of man, with his selfish and anti-social arrangements — yes. But no; it is the act, not of partial and hostile man, but of impartial and bounteous Nature. Upon the here-proposed plan, the only acts in which man has any concern, will be so many manifestations of beneficence, universal and indisputable beneficence.

§ 7. *In the eyes of capitalists, the proposed protection at the hands of the Anglo-American United States, necessary and satisfactory.*

The party here considered, as that to which such protection would naturally be looked upon as necessary, is the proposed *company*; the body of men by whom, antecedently to all commencement of profit, so vast a capital will be to be expended.

1. First as to *necessity*.

Without such a security, it seems difficult to say in what quarter, for such a purpose, a prudent set of capitalists could behold a sufficient ground for confidence.

On the part of the state or states, out of whose territory the requisite spot of ground would be to be carved, two points (it has already been observed) would require to be established: the constancy of their *disposition* to perform their part of the engagement, and the permanency of their *power* so to do.

But in respect of both these points, not only now, but for an indefinite time to come, persons in the situation of those from whom the capital would have to come, cannot but be in a great degree in the dark.

Take in the first place *Columbia*, the first-born and best known of the two infant states.

1. At the time at which this line is writing, neither is Porto Cabello, the last port remaining to Spain in the Atlantic, known as yet to be in possession of Columbia, nor is the result of the expedition towards the Pacific as yet known. In any complete state, the Republic, therefore, is not as yet so much as formed.

2. Of the effect of its *constitution*, and of its deportment in a state of peace, no experience whatever can have as yet been had.

3. Of the founder of this state, the Liberator Bolivar, the character forms no doubt already a very considerable ground for the requisite sort of confidence. Not only does it stand high at present, but it has for a long time done so in the estimation of those countries from which the capital will have to come. But the life of a single person, and *that* still exposed to the chances of war, is but a slender prop to lean upon. Nor, for some time, owing to the state of her military occupations, can matters of a civil nature be so much as submitted to his cognizance.

One circumstance, indeed, there is, which it may not be improper to mention in this view, and which, to English and United States' capitalists, cannot but be of an encouraging nature. The five men in whose hands the executive power is at present; namely, General Santander, vice-president of the Republic, Mr. Gual, minister of Foreign affairs, Mr. Restropo, minister of the Interior, Mr. Castillo, minister of Finance, Mr. Briceno, minister of the War and Marine Department, are all of them, it seems, well acquainted with the English language; and to men of English lineage, acquaintance with the English language, will naturally serve as a sort of circumstantial evidence of English ideas and affections. Still, however, this, though it is no trifle, is all which, at the vast distance of Bogota, the present capital, from the place of inquiry, there has as yet been time for the public in England, or in the Anglo-American United States, to learn, even in relation to the executive government; and as to the executive government, it is but the organ of the legislative. In London, the constitution has, indeed, though only within these few days, been made public. But the constitution of a state is one thing, the conduct of the government and the people under the constitution, another thing; and of this there cannot as yet have been any the smallest portion of time for observation and experience to have applied themselves to.

True it is, that before the earliest time at which any agreement, grounded on this or any other basis, can have been entered into, light in a considerable degree may naturally be expected to have been cast upon all this darkness. A small number of years, however, how tranquilly and prosperously soever they may have passed on, can in such a case afford but a slight foundation for the appropriate confidence; and, in the mean time, if the present opportunity be not embraced, — when minds are on the alert, generous affections not yet cooled, and what is more determinately material, capital, which as yet is in an overflowing state, not yet settled, in channels from which it cannot be diverted, — this or that unfavourable turn, taken by the political machine, may have opposed a final bar to the accomplishment of this matchless work of universal beneficence.

Thus much even as to Columbia. As to Mexico, to the eye of an English capitalist, everything in that quarter is as yet in utter darkness.

The result seems to be — that, without adequate *extraneous* security — security on both the above points; namely, permanency of *inclination*, and permanency of power — without additional security, such as nothing but the guarantee of a fully established government can give, capital to a sufficient amount would have but small likelihood of finding a sufficient ground for confidence.

To what government, then, for any such purpose, can expectation turn itself? Assuredly to one alone: and *that* is, the government which has here already been so continually presented to notice — the government of the Anglo-American United States.

In that government, prudence is too consummate and too constant, to admit of its entering into any such engagement, without an assurance of adequate benefit to the great community entrusted to its care. The grounds for such assurance will be touched upon under the next head. Under the present, their sufficiency must be provisionally assumed.

The *company* will require sufficient assurance of its being permitted, at all times to come, to exact the *price of transit*, and the rents and profits of its lands. Meantime, for the exercise of the powers of government on a sufficiently frugal plan, and in particular for the appointment of fit functionaries, it stands irremediably incapacitated — incapacitated, partly by local distance, partly by its own unchangeable constitution — an aristocratical government, the shares in which will be continually shifting hands, objects of purchase and sale, no one of all these rulers knowing anything about his subjects, nor caring anything more about them than he knows.

Were the details of government in hands so circumstanced, a necessary consequence is, that in the minds of the leading men, in this instance as in every other, the prime object would be *patronage*. To render this source of profit the more productive, useless and needless offices would gradually be multiplied, the emolument attached to them swollen to the utmost possible amount, pensions of retreat added, and the richest of the offices improved into sinecures. The proprietors at large, not finding, any of them, adequate inducements to expend their time upon the details of the government or the management — no individual among them beholding any recompense for his labour, unless it were in the being let into a partnership of the sinister profit, in the repression of which the only service he could render would consist — these proprietors, the great majority of them, would at all times, with the necessarily accustomed blindness and negligence, trust everything to those same leaders.

Thus, by the ever-beaten track — thus, a sure as man is man — would a government so constituted go on from worse to worse: the permanent prosperity, not only of its distant subjects, but of the company itself, that is to say, of the great majority of its members, offered up as a constant sacrifice to the particular and sinister interest, real or imagined, of a small junta of the leaders.

In a word, in neither of the two only shapes in question, could the profit be rendered permanent, by any other means than the establishment of a form of government, which had really for its object the greatest happiness of the greatest number of the people. But this it could not have, any further than in proportion to the share which the people themselves had in it. In such a situation as that in question, the people, it may be said, are not as yet of sufficient age to go alone. Such would assuredly not be the language in Columbia: such, it is hoped, would not be the language in Mexico. But such would but too naturally be the language in England. Well, then, in Washington may be seen an institution, which has long been in the habit of taking in infant states to nurse; witness Indiana, Illinois, Alabama, Missouri: and how excellent the system of *nursing* is — how admirable a dry nurse the President has always been — experience has abundantly testified. No sooner were the infants of an age to go alone, than the alacrity with which the leading strings would be taken off, has also been abundantly testified. Nor in all this is there anything to which any such imputation as that of vague theory can attach itself: it rests throughout on practice — long-continued and universally-notorious practice.

The circumlocution of "*the Anglo-American United States*," — a circumlocution as yet indispensable — for *these* are not at present the *only* American United States, — this circumlocution, howsoever where precision is an object, indispensable, is, to any other purpose, intolerable. Well, then — Washingtonia would, by the supposition, ease the company of the cares of government: she would do for the company, and continue to do, as she has always done, well, and to perfection, *that* which, for the company to do for itself, in any tolerable manner, and for any length of time, would be morally impossible.

The company being at the expense of the *fortifications*, these same fortifications would on both sides, — and in particular on that which is most material, the Atlantic side, — be in the hands of the company: here, so long as the fortifications remained untouched, would be even against the inhabitants themselves — the inhabitants of the Junctiana territory — a security, a substantial security for the main source of profit, the *price of transit*. Together with the fortifications, to the

company would belong the function and expense of garrisoning them. This it might do without considerable danger to itself — without considerable danger from infrugality and peculation: out of two small garrisons, the number of official situations being determinate, no great pickings could be made.

But, in case of aggression from any distant power, how would the fortifications be to be defended? By *land*, indeed, under a government such as here proposed, the assistance of the inhabitants of the territory might be trusted to as a sufficient defence. But by *sea*, a source of defence suited to the nature of that element would be necessary: and, for this defence, not only the *navy* of *Washingtonia* on the spot, but the mere *name* of it, would be sufficient. Under the assurance that making war upon *Junctiana*, would be making war upon *Washingtonia*, of no such war does there seem any the smallest danger at the hands of any other states. To destroy the communication, would be to put an end to their own use of it: to injure it, would be to injure themselves, were it in any other view than the putting themselves in possession of it. By putting themselves in *possession* of it, they could do themselves no service, any further than they could *keep it*. Keep it they might, if a navy alone would suffice to keep it. But this they could not do: no such thing could any one of them do without an army likewise: an army, and *that* sufficient to maintain itself against the three powers perpetually confederated in the defence of the object of a conquest so obviously untenable.

§ 8. *Anglo-American United States, — their inducements for granting the protection requisite.*

I. As to the guarantee looked for at their hands.

The purpose for which the concurrence of the long-established American Republic is regarded as necessary, has been already stated, — the affording to capitalists a sufficient assurance that the source of their profit will not be dried up — dried up, either by hostility from without, or by misconduct in any shape within.

The shapes in which eventual assistance is looked for at her hands, have also been already brought to view: —

1. First of the two mischiefs against which the guarantee is looked for: Hostility on the part of any maritime power — hostility directed to the purpose of destroying, injuring, or seizing and keeping, the line of communication: eventual assistance looked for, that of her naval force.

If, of the engagement for such eventual assistance, any actual addition to expense were a necessary consequence, here would be a burthen — a burthen to set in account against the accompanying benefit. But for any such expense, no probable need, it is believed, can be pointed out. For *general purposes*, a naval force, to a certain amount, she keeps up already, and will at all times keep up. The *sight* of this force, ready at all times to be called for and brought into action, should the conjuncture in question — the *casus fœderis*, as it is called by publicists — ever come into existence, will, in all human probability, be at all times sufficient for the purpose: to prevent its ever being called for, its universally known readiness to come whenever called for, will suffice.

2. Second of the two mischiefs against which the guarantee is looked for: Misconduct on the part of the population of *Junctiana;* misconduct, whether in the general shapes of misrule or anarchy, or in the particular shape of injustice towards the *company*, depriving them of the possessions stipulated for by them, in return for the expense to which this same population will, the greatest part of it, have been indebted for its existence.

The Junctiana territory being, by the supposition, a member of the United States; namely, in the first instance, upon the footing of their other dependent territories, and, as soon as ripe, upon the equal footing of an independent confederate; the following are rights, for the enjoyment of which the expectation of a guarantee on the part of the union will scarcely present itself as unreasonable: understand a guarantee, not only against all other nations, but against the Mexican and Columbian nations themselves, their consent to it being included in the agreement: —

1. Right of exacting the price of transit — so it be for ever without enhancement, unless it be in certain stipulated cases; 2. Right of receiving the rents and profits of whatever lands the company is proprietor of, as in the case of any other proprietors. Under these two heads is comprised everything that seems necessary.

II. As to their *inducements* for the affording this same guarantee.

To the entering into the engagement thus defined, refusal, or even reluctance, on the part of the United States in question, does not seem much to be apprehended.

By the supposition, the infant state would from the first be a member of their confederacy: in the first instance, and so long as in their judgment should be necessary, in a state of pupillage and probation — on the footing of what they call *a territory* — a territory nursed in the manner in which they are so well accustomed, and with such conspicuous success, to nurse infant states. Now, then, comes the question of their own skill in this most useful, most noble of all arts. In this instance any more than in any former one, can any dis-

trust on their part reasonably be expected to have existence?—distrust of their own skill, and after so many conclusive evidences of it as have been afforded by experience?

If indeed to such guarantee as that in question, any considerable danger were attached of their being engaged in war, here would be a contingent evil, to be set in the balance against the certain good. But, of any such war, the utter improbability has (it is hoped) been rendered sufficiently manifest. See the last preceding Section.

Without adequate prospect of benefit to their principals, duty and interest would concur in preventing these constantly and necessarily faithful trustees from taking any such part in the affairs of others. But of such benefit can there be any deficiency?

1. In the first place, on the supposition that, from the communication in question, benefit to *any* amount will be derived, of all the nations of the earth, will not they reap the greatest share of it? Already their commercial navy is not greatly inferior to that of England — to that of every other country it is decidedly superior. Erelong, in the natural course of things, it cannot fail of being superior even to that of England: and, whatever be the number of her vessels that will find a convenience in availing themselves of the communication, the convenience to each such American vessel will, in proportion to its greater vicinity to the spot, be rendered greater than it can be to any European one.

2. As to the *particular* benefit, from the so much speedier communication with the settlement or settlements, present, future, and contingent, in the Pacific, — on this subject enough has been already said.

True it is, that for the *representatives of Junctiana*, when they come to sit in congress, *distance* from the nearest part of the present territory of the United States will give an additional sea voyage of some days. But, upon the whole, would the length of time occupied by the conveyance be in any considerable degree greater than that which is at present occupied by the state most distant from the seat of government? And, whatever it be, what, if any, will be the amount of the practical inconvenience? At the utmost, it may operate as a slight deduction from the value of the benefit, but cannot assuredly ever operate as a bar to it.

Another acquisition, which, though not of quite so substantial a nature as either of the preceding ones, does not seem much in danger of finding the nation in question altogether insensible to its value, is that political gem called *glory:* glory—not of that bloody hue which, it is hoped, is growing more and more out of fashion, and will one day be as little in repute as spangles and embroidery upon a coat at present, but glory of the very purest water — the glory radiating from the uncontrovertible proof that will thus be given, of its having been looked up to as the nation which, in the opinion of two other free nations, stands highest in the composite scale of national probity, wisdom, and benevolence. Stands highest? or should it not rather have been said, is the *only* nation, in the government of which, any such union of virtues could, in the nature of things, have ever yet found place?

§ 9. *All other Nations, — their inducements to acquiescence.*

From the proposed communication, formed upon the proposed plan, all other nations have more or less to gain, nothing to lose. Whatever may be the gain, it will, in the instance of each such nation, be at the risk of others, without risk in any shape to itself.

That which they will gain by this means, they could not, any of them, gain by any other means.

A PROTEST AGAINST LAW-TAXES,

SHOWING THE

PECULIAR MISCHIEVOUSNESS OF ALL SUCH IMPOSITIONS AS ADD TO THE EXPENSE OF APPEAL TO JUSTICE.

BY

JEREMY BENTHAM.

(PRINTED IN 1793, AND FIRST PUBLISHED IN 1795.)

TAXES on law-proceedings constitute in many, and perhaps in all nations, a part of the resources of the state. They do so in Great Britain — they do so in Ireland. In Great Britain, an extension of them is to be found among the latest productions of the budget — in Ireland, a further extension of them is among the measures of the day. It is this impending extension that calls forth the publication of the present sheets, the substance of which has lain upon the shelf these many years.

It is a well-known parliamentary saying, that he who reprobates a tax ought to have a better in his hand.* A juster condition never was imposed. I fulfil it at the first word. My better tax is —— any other that can be named.

The people, when considered with a view to the manner in which they are affected by a tax of this description, may be distinguished into two classes: those who in each instance of requisition have wherewithal to pay, and those who have not: to the former, we shall find it more grievous than any other kind of tax, to the latter a still more cruel grievance.

Taxes on consumption cannot fall but where there is some fund to pay them: of poll taxes, and taxes on unproductive property, the great imperfection is, that they may chance to bear where such ability may be wanting. Taxes upon law-proceedings fall upon a man just at the time when the likelihood of his wanting that ability is at the utmost. When a man sees more or less of his property unjustly withholden from him, then is the time taken to call upon him for an extraordinary contribution. When the back of the innocent has been worn raw by the yoke of the oppressor, then is the time which the appointed guardians of innocence have thus pitched upon for loading him with an extraordinary burthen.† Most taxes are, as all taxes ought to be, taxes upon affluence — it is the characteristic property of this to be a *tax upon distress*.

A tax on bread, though a tax on consumption, would hardly be reckoned a good tax; bread being reckoned in most countries where it is used, among the necessaries of life. A tax on bread, however, would not be near so bad a tax as one on law-proceedings: a man who pays to a tax on bread, may, indeed, by reason of such payment, be unable to get so much bread as he wants, but he will always get some bread, and in proportion as he pays more and more to the tax, he will get more and more bread. Of a tax upon justice, the effect may be, that after he has paid the tax, he may, without getting justice by the payment, lose bread by it: bread, the whole quantity on which he depended for the subsistence of himself and his family for the season, may, as well as anything else, be the very thing for which he is obliged to apply to justice. Were a three-penny stamp to be put upon every three-penny loaf, a man who had but three-pence to spend in bread, could no longer indeed get a three-penny loaf, but an obliging baker could cut him out the half of one. A tax on justice admits of no such retrenchment. The most obliging stationer could not cut a man out half a *latitat* nor half a *declaration*. Half justice, where it is to be had, is better than no justice: but without buying the whole weight of paper, there is no getting a grain of justice.

* It confines itself of course to public men, or what comes to the same thing, private men speaking in the character of public. As for individuals aggrieved, they have performed their part when they have stated their own grievance.

† Even in the instance of a defendant, or when the wrong is not pecuniary, the hardship of a double yoke does not cease: for the natural expense of litigation is a burden which this artificial one finds pressing on him in any case.

A tax on necessaries is a tax on this or that article, of the commodities which happen to be numbered among necessaries: a tax on justice is a tax on all necessaries put together. A tax on a necessary of life can only lessen a man's share of that particular sort of article: a tax on justice may deprive a man, and that in any proportion, of all sorts of necessaries.

This is not yet the worst. It is not only a burthen that comes in the train of distress, but a burthen against which no provision can be made.

All other taxes may be either foreseen as to the time, or at any rate provided for, where general ability is not wanting: in the instance of this tax, it is impossible to foresee the moment of exaction—it is equally impossible to provide a fund for it. A tax to be paid upon the loss of a husband, or of a father on whose industry the family depended —a tax upon those who have suffered by fire or inundation, would seem hard, and I know not that in fact any such modes of taxation have ever been made choice of: but a tax on law-proceedings is harder than any of these. Against all those misfortunes, provision may be made; it is actually made in different ways by insurance: and, were a tax added to them, pay so much more, and you might insure yourself against the tax. Against the misfortune of being called upon to institute or defend one's self against a suit at law, there neither is nor can be, any *office of insurance*.*

Such is the cruelty of this species of tax, to those who have wherewithal to pay, and do pay to it accordingly. To those who do not, it is much more cruel: it is neither more nor less than *a denial of justice*.

Justice is the security which the law provides us with, or professes to provide us with, for everything we value, or ought to value—for property, for liberty, for honour, and for life. It is that possession which is worth all others put together: for it includes all others. A denial of justice is the very quintessence of injury, the sum and substance of all sorts of injuries. It is not robbery only, enslavement only, insult only, homicide only—it is robbery, enslavement, insult, homicide, all in one.

The statesman who contributes to put justice out of reach, the financier who comes into the house with a law-tax in his hand, is an accessary after the fact to every crime: every villain may hail him brother, every malefactor may boast of him as an accomplice. To apply this to intentions would be calumny and extravagance. But as far as consequences only are concerned, clear of criminal consciousness and bad motives, it is incontrovertible and naked truth.

Outlawry is the engine applied by the law, as an instrument of compulsion to those who fly from civil justice. Outlawry is the engine employed as an instrument of punishment against the most atrocious of malefactors. This self-same load of mischief, the financier, with perfect heedlessness, but with unerring certainty, heaps on the head of unsuspected innocence. Besides outlawry, which, in the cases where the offender could not otherwise be affected, comes in as subsidiary in lieu of other punishment, there are certain offences for which a man is subjected, expressly and in the first instance, to a similar punishment, under the name of *forfeiture of the protection of the law*. The same fate attends a man thus at different periods, according to his merits. If guilty, it lays hold of him after conviction, for a particular cause, and without excluding the hope of pardon: if innocent, and poor, and injured, before conviction, and without conviction, and for no cause at all, and as long as he continues poor, that is, as long as he lives.

What a contrast! What inconsistency! The judge and the legislator deliberating with all gravity, each in his separate sphere, whether to inflict or not this heavy punishment on this or that guilty individual, or narrow description of guilty individuals. The legislator, on the other hand, merely to get a little money which he could better get from any other source whatever, heaping the same doom upon thousands, not to say millions, of innocent and injured subjects, without consideration or remorse.

Mark well, that of all sorts of men, it is the poor, and they the more certainly in proportion to their poverty, that are despoiled in this way of the protection of the law: the protection of the law, that inestimable jewel, which in the language of that very law is defined the citizen's universal and best birthright: the poor, and him that has none to help him, these are they to whom the help of the law is thus unfeelingly refused. The rich, were it from them that this great safeguard were withholden, have shields of their own to

* I say there never can be: in those other instances the event insured against is always some very simple event,—such as the death of a person,—which in the ordinary course of things is not open to dispute. Here the incident which calls for contribution, is not only disputable, but by the supposition is actually in dispute. Nothing less than litigation can ascertain legally, whether litigation has been necessary. Have you engaged with a man for his paying you a sum of money whenever it shall become necessary for you to institute or defend yourself against a lawsuit?—wait till the suit is at an end, and you will know whether he ought to pay you. A society indeed, and a very laudable one, has been established for purposes which come under this head: but the relief it affords is confined not only to criminal cases, but to a certain description of criminal cases; nor could it be rendered anything like co-extensive with the grievance.

ward off the attacks of injury: the natural influence of wealth, the influence of situation, the power of connexion, the advantages of education and intelligence, which go hand in hand with wealth. The poor has but one strong-hold, the protection of the law: and out of this the financier drives him, without vouchsafing him a thought, in company with the herd of malefactors.

The poor, on account of the ignorance and intellectual incapacity inseparably attached to poverty, are debarred generally — as perhaps it is necessary, were it only for their own sake, they should be universally—from the sweets of political power: but are not so many unavoidable inequalities enough, without being added to by unnecessary injustice?

Such is the description of those from whom this sum total of all rights is torn away with one hand, while tendered with the other: what are their numbers in proportion to the sum total of subjects? I fear to say — perhaps two-thirds, perhaps four-fifths, perhaps nine-tenths; but at the lowest computation a vast majority.*

A third description of persons may yet be distinguished, whose condition under the system of law-taxes is still more deplorable than that of either of the other two. I mean those who, having wherewithal to pay the imposition at the commencement of the suit, and during more or less of its progress, see their substance swallowed up by the taxes before the termination of it. The two preceding modifications of abuse, either of them bad enough, are thus put together, and compounded into a third.

Considered with a view to the treatment given to persons of this description, a court of justice is converted into exactly the same sort of place, as the shop of a baker would be, who having ranged his loaves along his window in goodly show to invite customers, should, instead of selling them the bread they asked for, first rob them of their money, and then turn them out of doors. To an unprejudiced imagination, the alliance between justice and finance, presents on this occasion a picture almost too near the truth to be termed an apologue. At the door of a house more predatory than any of those that are called houses of ill fame, the *judge* in his robes presenting to unsuspecting passengers a belt to prick in; the *Lord High Treasurer* in the back ground with his staff, lying in wait, ready as soon as the victims are fairly housed, and the money on the table, to knock them down and run away with it. The difference is, that any man may choose whether he will prick in the belt of the unlicensed sharper, nor are any but the rawest louts to be so deluded: whereas the wisest men may be inveigled in, as well as the stoutest dragged in, by the exalted and commissioned plunderers —— so much surer is their game. For were the list of law-taxes ever so familiar, and ever so easy to be understood, it is impossible for a man to know beforehand whether he has wherewithal to pay the bill, because it is impossible for him to know what incidents may intervene to lengthen it. Were a man even to sit down and form a resolution to submit to every injury which he could not afford to prosecute for, and to plead guilty to every accusation which he could not afford to defend himself against, even at this price he could not save himself from the hardship of paying for justice, aggravated by the still greater hardship of not getting it.

If in all cases the practice is wicked, in some it is more particularly preposterous. In civil causes, and other causes where the injury to individuals affords a natural interest to prosecute, artificial expenses are cruelty and breach of faith: in a large class of penal causes, in which, for want of such natural interest, prosecutors must be engaged by factitious inducements, or the law be a dead letter, the cruelty and treachery are crowned by blunder and inconsistency. Beckoned into court with one hand, men are driven away with the other. But, costly as the attractive power frequently is, the repulsive force is apt to be much stronger. Reward is subsequent, distant, uncertain, and dependent upon success. Trouble, expense, and odium, are certain and precedent.†

* In England, the expense of carrying through a common action, cannot be less than about £24 at the lowest rate, on the plaintiff's side alone, [See Schieffer on Costs, 1792.] The average expense of civil suits of all sorts, taking equity causes into the account, can surely not be rated at less than double that amount, on that one side. The average expenditure of an English subject, infants and adults, rich as well as poor, taken together, has been computed by Davenant (as quoted on this occasion somewhere by Adam Smith) at £8 a-year. Six years' income then is what a man must have in advance, before he can be admitted to take his chance for justice. Of many estimates which Dr. Anderson had met with, £20 was the highest, and he takes but ten pounds. [Interest of Great Britain with regard to her colonies, London, 1792.] No man then, we may say at any rate, can have the benefit of justice, in the ordinary way, either in making good a just claim, or saving himself from an unjust one, who cannot find, for this purpose alone, a sum equal to several years of a man's income. From this statement it needs not much study to perceive, that for the bulk of the community, as far as ordinary cases of the civil kind are concerned, *justice* is but an empty name.

† This species of tax would stand absolutely alone in point of depravity, were it not for the tax on drugs, as far as it extends to those used in medicine. This, as being also a tax upon distress, is so far in specie the same, but is nothing to it in degree. To recover a shilling in the way of justice, it will cost you at least £24, of which

In favour of this species of imposition, I have seen two arguments produced.

One is, that in this case as in others, the burthen of an establishment ought to lie on those by whom the benefit is reaped. The principle is incontrovertible: the matter of fact supposed by the application of it is not true.

The argument, were it just, would not extend beyond so much of the produce of the tax as is requisite for defraying the charge of this part of the national establishment. Whether it be confined or no within these bounds, was perhaps never thought worth inquiring into, in any country where this tax was imposed. It certainly extends much beyond them in England; and it seems to be resorted to from time to time, with as little scruple, as an extension of the customs or excise. But let this pass.

As to the notion of a connexity in this case betwixt the benefit and the burthen, it has been countenanced by an authority too respectable, not to deserve the most serious notice;* but come it from whom it will, it is a mere illusion. The persons on whom the whole of the burthen is cast, are precisely those who have the least enjoyment of the benefit: the security which other people enjoy for nothing, without interruption, and every moment of their lives, they who are so unfortunate as to be obliged to go to law for it, are forced to purchase at an expense of time and trouble, in addition to what pecuniary expense may be naturally unavoidable. Meantime, which is of most value? — which most worth paying for? — a possession thus cruelly disturbed, or the same possession free from all disturbance? So far then from being made thus wantonly to pay an extra price, a man who stands in this unfortunate predicament, ought rather to receive an indemnification at the public expense for his time and trouble; and the danger of insidious or collusive contests, in the view of obtaining such an indemnity, is the only objection I can see, though perhaps a conclusive one, against the granting it.

Litigation may in this point of view be compared to war in sober sadness, as war has been to litigation in the way of pleasantry. The suitor is the forlorn hope in this forensic warfare. To throw upon the suitor the expense of administering justice, in addition to the trouble and the risk of suing for it, is as if, in case of an invasion, you were to take the inhabitants of the frontier and force them not only to serve for nothing, but to defray of themselves the whole expenditure of the war.

What in our times is become inveterate practice, is stigmatized as a species of iniquity without a precedent, by Saint Paul. "*Who is there,*" demands the Apostle, "*who is there that ever goes to war at his own charge?*" — "*Alas!*" cries the poor suitor, "*I do.*"

The other argument in favour of a set of taxes of this kind, is, that they are a *check to litigation.*

Litigation is a term not altogether free from ambiguity. It is used sometimes in a *neutral* sense, to denote the prosecuting or defending a suit, though perhaps more frequently in a bad one. In its neutral sense, it expresses the irreproachable exercise of an essential right: in a bad sense, a species of misconduct practised under the notion of exercising such a right.

In the first sense, taxes can never have been recommended by any man as a check to litigation: in this sense, an avowed desire of checking litigation would be neither more nor less than an avowed desire of denying justice.

In a bad sense again, the word is used on two different occasions; where the suit, whatever be the importance of the matter in dispute, is on the part of the person spoken of as maintaining it, a *groundless* one: and where the suit, however well-grounded on his part in point of title, is on account of the supposed unimportance of the matter in dispute, deemed a *frivolous*, a *trifling*, a *trivial* one; and in either case, it is of course applicable to the situation of either plaintiff or defendant, though it is apt to fix in the first instance, and most readily upon the situation of the plaintiff, as being the party, who, by taking the first step on the commencement of the suit, exhibits himself as the author of it.

On either side, litigation, when *groundless*, may be accompanied or not, with what the lawyers call in *genere malitia*, meaning *consciousness of mischief*, and in this particular case *mala fides*, consciousness of the groundlessness of the action or defence — consciousness of the *want of merits*.

---

a good part in taxes: but to be admitted to buy a shilling's worth of medicine for a shilling, it does not cost you threepence. Hospitals for the sick are not uncommon: there are none for harassed and impoverished suitors. There are *Lady Bountifuls* that relieve the sick from the tax on medicines, and the price of them into the bargain: but a *Lady Bountiful* must be bountiful indeed, to take the place of attorney and counsel, as well as of physician and apothecary, and supply a poor man with as many pounds worth of *lenitats* and *pleas*, as he must have to recover a shilling. A man cannot, as we have seen, insure himself against lawsuits: but a man may insure himself, and many thousands actually do insure themselves against sickness. But these reliefs are neither certain nor general: and after all, a tax on him who has had a leg or an arm broken, a tax on him who has had a fit of the ague, gout, rheumatism, or stone, will be the worst possible species of tax, next to a tax on justice.

N. B. The tax on quack medicines, that is, on unknown and unapproved medicines, leaving all known and approved ones untouched, falls in a less degree, if at all, under this censure.

* Dr. Adam Smith, Wealth of Nations.

Where merits are wanting, but there exists no consciousness of the want, taxes on law-proceedings do, it must be confessed, operate as a check to litigation; and that as well on the side where it is groundless as on that where it is well-grounded, and in the same degree. Indeed, as both of two contending parties cannot in point of law be actually in the right, though either or both may think themselves so, the impediment cannot operate to the denial of justice, but it must operate to the prevention of groundless litigation at the same time. Prevent him who is in the right from instituting a suit, you prevent him who is in the wrong from defending one. But neither is litigation prevented, any further than as justice is denied. So far then as this case extends, it is still but the other side of the same effect, the *denial of justice*.

Have they then any peculiar tendency to operate as a check to litigation, when it is not only groundless, but accompanied with a consciousness of its being so?—to *malicious*, or as it might with more propriety be termed, *anti-conscientious* litigation? On the contrary, their direct tendency and sure effect is to promote it.

They produce it on the part of the *plaintiff*.—Were proceedings at law attended with no expense nor other inconvenience, till the suit were heard and at an end, a plaintiff who had no merits, could do a defendant man no harm by suing him: he could give him no motive for submitting to an unfounded claim; malice would have no weapons; oppression would have no instrument. When proceedings are attended with expense, the heavier that expense, the greater of course is the mischief which a man who has no merits is enabled to do; the sharper the weapon thus put into the hand of malice, the more coercive the instrument put into the hand of the oppressor.

They produce it on the part of the *defendant*. Were proceedings at law attended with no expense, a defendant who knew he had no merits, a defendant who was conscious that the demand upon him was a just one, would be deprived of what is in some cases his best chance for eluding justice, in others the absolute certainty of so doing; he would lose the strongest incentive he has to make the attempt. A defendant who means not to do justice unless compelled, and who knows that the plaintiff cannot compel him without having advanced a certain sum; such a defendant, if he thinks his adversary cannot raise that sum, will persevere in refusal till a suit is commenced, and in litigation afterwards.

Whether they make the litigation, or whether they find it ready made, they show most favour to the side on which anti-conscientious litigation is most likely to be found. By attaching on the commencement of the suit, they bear hardest upon the plaintiff, or him who, if they would have suffered him, would have become plaintiff. In so doing they favour in the same degree the defendant, or him who, if the party conceiving himself injured, could have got a hearing, would have been called upon to defend himself. But it is on the defendant's side that anti-conscientious practice is most likely to be found. Setting expense out of the question, an evil of which these laws are thus far the sole cause—setting out of the question the imperfections of the judicial system, and the hope of seeing evidence perish, or the guilty view of fabricating it, a man will find no motive for instituting a suit for an ordinary pecuniary demand, without believing himself to be in the right; for if he is in the wrong, disappointment, waste of time, fruitless trouble, and so much expense as is naturally unavoidable, are, by the supposition, what he knows must be his fate. Whereas, on the other hand, a man upon whom a demand of that kind is made, may, although he knows himself to be in the wrong, find inducement enough to stand a suit from a thousand other considerations; from the hope of a deficiency in point of evidence on the part of the plaintiff, not to mention, as before, the rare and criminal enterprise of fabricating evidence on his own part,—from the hope of tiring the plaintiff out, or taking advantage of casual incidents, such as the death of witnesses or parties,—from the temporary difficulty or inconvenience of satisfying the demand, or (to conclude with the case which the weakness of human nature renders by far the most frequent) from the mere unwillingness to satisfy it.

In a word, they give a partial advantage to conscious guilt, on whichever side it is found; and that advantage is most partial to the defendant's side, on which side consciousness of guilt, as we see, is most likely to be found.

Better, says a law maxim subscribed to by everybody, better that *ten* criminals should escape, than one innocent person should suffer; and this in case even of the deepest guilt. For *ten*, some read a *hundred*, some a *thousand*. Whichever reading be the best, an expedient of procedure, the effect of which were to cause ten innocent persons to suffer for every ten guilty ones, would be acknowledged to be no very eligible ingredient in the system. What shall we say of an institution, which for one culpable person whom it causes to suffer, involves in equal suffering perhaps ten blameless ones.

Thus much for *groundless* suits: there remains the plea of its tendency to check what are deemed *trivial* suits.

I know what a *groundless* suit means—I know of no such thing as a *frivolous* one. No wrong that I know of can be a trivial one, which to him to whom it is done appears

a serious one, serious to such a degree, as to make it worth his while to demand redress at the hand of justice. Conduct is the test of feeling. I know of no right I have to set up any feelings of my own as the standard of those of my neighbour, in contradiction to a declaration of his, the truth of which is evidenced by his own conduct. What to one man again is trivial, to another man may be of high importance. In the account of wrong too must be included, not only the individual wrong taken by itself, but its effects in the way of encouragement to repetition, and its effects in the way of example. I know of no wrong so slight, that by multiplication may not become intolerable. Give me but a licence to do to any person at pleasure the minutest wrong conceivable; — I need no more, that person is my slave. Allow me to rob him, though it be but of a farthing, farthing by farthing, I will find the bottom of his purse. Allow me but to let fall a drop of water upon his head — *gutta cavat lapidem*, the power of striking his head off would be less susceptible of abuse.

In pecuniary cases, the smaller the sum in dispute, the less reserve is used in branding the conduct of the parties with the charge of litigation, of which, in such cases the reproach is apt to fall principally, if not exclusively, to the plaintiff's share. But the importance of the sum is altogether governed by the circumstances of the parties; the amount of it in pounds, shillings, and pence, shows nothing. One man's income may be a hundred, a thousand, four thousand times as great as that of another. In England there are men whose income exceeds £60,000 a-year. Fifteen pounds a-year is as much as falls to the lot of perhaps the greater number of the whole body of the people. Without a particular caution, a legislator or a judge will naturally enough, like any other man, take the relation of the sum in dispute to his own feelings, that is, its ratio to his own circumstances, for the measure of importance; but by this standard he will be sure to be deceived, as often as the circumstances of the parties, or either of them, are materially different from his own. Fifty pound, for example, will be apt to appear in his eyes an object of considerable importance; an object of which a tenth or a twentieth part, or less, might be of importance sufficient to justify from the charge of litigation, the maintenance of a suit. A shilling would be almost sure to appear to him an object altogether trifling; an object by no means of magnitude enough to warrant the maintenance of a suit. Fifty pound is, however, a sum of less importance to a Duke of Marlborough or Bedford, than a single shilling (viz. than a thousandth part of £50) to many a man, in truth to probably the majority of men in the kingdom. It is therefore more unjust, more tyrannical, to refuse to hear the demand of an ordinary working man to the amount of a shilling, than it would be to refuse to hear the demand of a Duke of Marlborough or Bedford, to the amount of £50. The legislator who, on the plea of checking litigation, or on any other plea, exacts of a working man as a preliminary to his obtaining justice, what that working man is unable to pay, does refuse to him a hearing,— does, in a word, refuse him justice, and that as effectually and completely as it is possible to refuse it.

That all men should have *equal rights*, not only would be politically pernicious, but is naturally impossible: but I hope this will not be said of *equal justice*.

Trivial causes require no such factitious checks: to such causes were all expenses struck off that can be struck off, there are natural checks in abundance, that are unavoidable. There is the pain of disappointment: there is expense, of which a certain measure will every now and then be absolutely unavoidable: there is consumption of time, which to the working classes, that is to the great majority of the people, is expense.

But even let the cause be trivial, and that to such a degree as to render the act of commencing the litigation blameable, the blame is never so great on the side of the party most favoured by the tax, as on the side of the party most oppressed by it. The party most oppressed is the complainant—the party who, having suffered the injury, such as it is, claims or would claim satisfaction for it at the hands of justice. But, so as there does but exist the smallest particle of an injury, the party who claims satisfaction for it can never be so much in the wrong for doing so, but that he who refuses satisfaction must be still more so. If the demand be just, why did not he comply with it? If just, but trifling, why does he contest it? In this case then you cannot punish in this way the misconduct of one party, without rewarding the still greater misconduct of the other. If the tax applies a check where there is blame, it affords protection and encouragement where there is still greater blame.

Another injustice. — The poorer a man is, the more exposed he is to the oppression of which this supposed remedy against litigation is the instrument. But the poorer a man is, the less likely he is to be litigious. The less time a man has to spare, and the less a man can afford to expend his time (not to speak of money) without being paid for it, the less likely is he to expose himself to such a consumption of his time.

The rich man, the man who has time and money at command, he surely, if any, is the man to consume it litigiously and frivolously. No wonder however, if to a superficial glance, the poor should appear more litigious than he.

There are more of the poor than of the rich: and to the eye of unreflecting opulence, the causes of the poor are all trivial ones.

We think of the poor in the way of charity, for to deal out charity gratifies not only benevolence, but pride. We think much of them in the way of charity, but we think little of them in the way of justice. Justice, however, ranks before charity; and they would need less charity, if they had more justice.

What contributes more than anything to the indignation excited by suits that are deemed trivial, and, on account of the triviality *vexatious*, is the excessive ratio of the expense of the suit to the value of the matter in dispute: especially when the matter in dispute being pecuniary, its minuteness is more conspicuous and defined. But to what is this expensiveness owing? As far at least as these taxes are in question, to the legislator himself. Mark then the iniquity: — he is himself the author of the wrong, and he punishes for it the innocent and the injured.

To exclude the poor from *justice* was not enough: — they must be excluded also from *mercy*. Forty shillings is the tax imposed on pardons, by a statute of King William (5 & 6 W. & M. c. 21. § 3.) forty shillings more by another, not five years afterwards, (9 & 10 W. III. c. 25. § 3, 50.) Together, £4: — half a year's income of a British subject, according to Davenant's computation above quoted. What is called *mercy*, let it be remembered, is in many cases, no more than *justice*: in all cases where the ground of pardon is the persuasion of innocence, entertained either notwithstanding the verdict, or in consequence of evidence brought to light after the verdict.* All punishments are accordingly irremissible, to him who has not to the amount of half a year's income in store or credit — all fines to that amount or under, absolutely irremissible.†

Taxes on law-proceedings, so far then from being a check to litigation, are an encouragement to it — an encouragement to it in every sense in which it is mischievous and blameable. Would you really check litigation, and check it on both sides? — the simple course would be a sure one. When men are in earnest about preventing misconduct in any line, they annex punishment to misconduct in that line, and to that only: a species of misconduct which cannot be practised but as it were under the eye of the court, is of all others the easiest to cope with in the way of law. Deal with misconduct that displays itself under the eye of the court as you deal by delinquency at large, and you may be sure of succeeding to a still superior degree. Discriminate misconduct then from innocence: lay the burthen on misconduct and misconduct only, leaving innocence unoppressed. Keep back punishment, till guilt is ascertained. Keep back costs, as much as possible, till the last stage of procedure; keep off from both parties everything of expense that is not absolutely unavoidable, where litigation is on both sides without blame: at that last stage if there be found blame, throw whatever expense of which you allow the necessity to subsist beyond what is absolutely unavoidable, — throw it on that side, and on that side only, where there has been blame. If on both, then if circumstances require, punish it on both sides, by fine for instance, to the profit of the public.

Litigation, though eventually it prove groundless — litigation, like any other course of conduct of which mischief is the result, is not therefore blameable; and where it is blameable, there is a wide difference whether it is accompanied with temerity only, or with consciousness of its own injustice. The countenance shown to the parties by the law ought to be governed, and governed uniformly and proportionally, by these important differences. — So much in point of utility: — how stands establishment? — Taxes heaped on in all stages from the first to the last without distinction: — all costs given or no costs, no medium: — costs scarce ever complete, and nothing beyond costs. No mitigation, or enhancement, in consideration of pecuniary circumstances. No shades of punishment in this way correspondent to shades of blame — in most cases no difference so much as between consciousness of injustice and simple temerity, nor so much as betwixt either and innocence. The power of adjudging as between costs and no costs, seldom discretionary: — that of apportioning, never: — nor that of fining beyond the amount of costs: — consequently nor that of punishing both parties where both have been to blame. Were a power to be given by statute to impose on a litigious suitor convicted of litigation, a fine to an amount not exceeding what the losing party pays now, whether he be blameable or blameless, it would be cried out against perhaps as a great power, too great to be given to judges without juries.‡

* For instance the case of Mr. Atkinson.

† It would be curious enough to know what profit the Treasury may have drawn from that time to the present, from so extraordinary a fund: certainly, not enough to pay the salary of one of the Lords Commissioners: probably not enough to pay that of his valet-de-chambre.

These are busy statutes. By the prohibition and sale of justice, they run counter to Magna Charta; — by the prohibition of mercy, they break the coronation oath. [By 58 Geo. III. c. 29, (23d May, 1818), the expenses connected with pardons are no longer to be paid by the persons pardoned, but by the Treasury. — *Ed.*]

‡ The distinction between temerity and consciousness of blame, a distinction pervading human nature, and applicable to every species of

Justice shall be denied to no man, justice shall be sold to no man, says the first of statutes, *Magna Charta*. How is it under these later ones? — Denied, as we have seen, to nine-tenths of the people, sold to the other tenth at an unconscionable price. It was a conceit among the old lawyers, reported if not adopted by Lord Coke, that a statute made contrary to *Magna Charta*, though made in all the forms, would be a void law. God forbid, that by all the lawyers in the world, or for the purpose of any argument, I should ever suffer myself to be betrayed into any such extravagance: in a subject it would be sedition, in a judge it would be usurpation, in anybody it would be nonsense. But after all it must be acknowledged, to be in some degree unfortunate, as well as altogether singular, that, of an instrument deemed the foundation of all liberty, and magnified as such even still, to a degree of fanaticism, a passage by far the most important, and almost the only one that has any application now-a-days, should be thus habitually trodden under foot, without remorse or reclamation.*

A tax so impolitic and so grievous — a tax thus demonstrated to be the worst of taxes, how comes it ever to have been made choice of, and when made choice of, acquiesced in? These are not questions of mere curiosity for acquiescence under a tax, and that so general, forms at first glance no inconsiderable presumption in its favour. A presumption it does form: but when demonstration has shown itself, presumptions are at an end.

How comes the tax to have been made choice of? One cause we have seen already in another shape; the unscrutinized notion of its supposed tendency to check *litigation*: litigation which, where it stands for mischief, is the very mischief which the species of tax in question contributes with all its power to promote.

Another cause may possibly be, the tendency which this sort of tax has to be confounded in the eye of an incurious observer, with other sorts, which are either the best of all, or next to the best. The best of all are taxes on consumption, because not only do they fall nowhere without finding some ability to pay them; but where necessaries are out of the question, they fall on nobody who has not the option of not paying them if he does not choose it. Taxes on property, and those on transfer of property, such as those on contracts relative to property, are the next best: because though they are not optional like the former, they may be so selected as never to call for money but where there is ability, nay even ample ability, to pay them. Now, of these two most supportable classes of taxes, the second are all of them levied by means of *stamps*: taxes on consumption, too, in many instances, such as those on cards, dice, gloves, and perfumery, show to the eye as stamp-duties. But all these are very good taxes. Stamp-duties therefore are good taxes: and taxes on justice are all stamp-duties. Thinking men look to consequences; they look to the feelings of the individuals affected: acting men look to the stamp: taxes on justice, taxes on property, taxes on consumption, are accordingly one and the same object to the optics of finance. Stamp-duties too have another most convenient property: they execute themselves, and law-taxes beyond all others: in short, they exclude all smuggling.† They heap distress indeed upon distress; but the distress is not worth minding, as there is no escaping it.

But the great cause of all is the prospect

---

misbehaviour, is scarce so much as known to the English law. There are scarce words for it in the language. *Temerity* is taken from the Roman law. *Malice*, the term by which English lawyers seem in some instances to have had in view the expressing consciousness of blame, presents a wrong idea, since in common language it implies *hatred*, an affection which in many instances of conscious guilt, may be altogether wanting: — instance, offences of mere rapacity, such as theft, robbery, and homicide for lucre.

The legislator? — he talk of vexation? — He does everything to create the evil, he does nothing to remove it.

I happened once to fall into conversation with a man, who, from an attorney had been made judge of one of the provinces in America. Justice, I understood from him, was on a very bad footing there: it might be had almost for nothing: the people were very litigious: he found them very troublesome. A summons cost — I forget whether it was three-and-sixpence or half-a-crown. Whom the half-crown went to I do not know: one may be pretty certain not to the judge. — Seeing no prospect of our agreeing, I did not push the conversation far. The half-crown seemed to him too little: to me it seemed all too much. The pleasant thing would have been to have enjoyed the salary in peace and quietness, without being plagued with a parcel of low people. Justice would then have been upon the best footing possible. He had accordingly a project for checking litigation by raising the fees. I don't know whether it succeeded.

* Let us not for the purpose of any argument, give rise or countenance to injurious imputations. Though justice is partly denied, and partly sold, the difference is certainly immense, betwixt selling it for the personal benefit of the king or of a judge, and selling it for the benefit of the public — betwixt selling it by auction, and selling it at a fixed price — betwixt denying it for the sake of forcing the sale of it, or denying it to a few obnoxious individuals, and denying it indiscriminately to the great majority of the people. In point of moral guilt, there is certainly no comparison: but in point of political effect, it may not be altogether easy in every part, of the parallel, to say which mode of abuse s most extensively pernicious.

† Law paper might be forged: but the difficulty would be to issue it.

of acquiescence — a prospect first presented by hope, since realized over and over again by experience. It is too much to expect of a man of finance, that he should anticipate the feelings of unknown individuals: it is a great deal if he will listen to their cries. Taxes on consumption fall on bodies of men: the most inconsiderable one, when touched, will make the whole country ring again. The oppressed and ruined objects of the taxes on justice, weep in holes and corners, as rats die: no one voice finds any other to join with it.

A tax on shops, a tax on tobacco, falls upon a man, if at all, immediately, and presses on him constantly: — every man knows whether he keeps, or means to keep a shop — whether he means to sell or to use tobacco. A tax on justice falls upon a man only occasionally: it is like a thunder-stroke, which a man never looks for till he is destroyed by it. He does not know when it will fall on him, or whether it ever will: nor even whether, when it does fall, it will press upon *him* most, or upon his adversary. He knows not what it will amount to: he has no *data* from which to calculate it: it comes lumped to him in the general mass of law charges: a heap of items, among which no vulgar eye can ever hope to discriminate: an object on which investigation would be thrown away, as comprehension is impossible. Calamities that are not to be averted by thought, are little thought of, and it is best not to think of them. When is the time for complaint? Before the thunder-bolt is fallen it would be too soon — when fallen, it is too late. Shopkeepers, tobacconists, glovers, are compact bodies — they can arm counsel — they come in force to the House of Commons. Suitors for justice have no common cause, and scarce a common name — they are everybody and nobody—their business being everybody's is nobody's. Who are suitors? where are they? what does a Chancellor of the Exchequer care for them? what can they do to help him? what can they do to hurt him? So far from having a common interest, they have a repugnant interest: to crush the injured, is to befriend the injurer.

May not ignorance, with regard to the quantum and the source of the grievance, have contributed something to patience? Unable to pierce the veil of darkness that guards from vulgar eyes the avenues of justice, men know not how much of the difficulty of the approach is to be ascribed to art, and how much to nature. As the consumers of tobacco confound the tax on that commodity with the price, so those who borrow or would have wished to borrow the hand of justice, confound the artificial with the natural expense of hiring it. But if the whole of the grievance be natural, it may be all inevitable and incurable, and at any rate it may be no more the fault of lawyers or law-makers, than gout and stone are of physicians. Happy ignorance! if blindness to the cause of a malady could blunt the pain of it!

There want not apologists-general and talkers in the air, to prove to us that this, as well as everything else, is as it should be. The expense, the delay, and all the other grievances, which activity has heaped up, or negligence suffered to accumulate, are the prices which, according to Montesquieu, we must be content to pay for liberty and justice. A penny is the price men pay for a penny loaf: therefore why not twopence? and, if threepence, there would be no harm done, since the loaf would be worth so much the more.

May not a sort of instinctive fellow-feeling among the wealthy have contributed something, if not to the imposition, at least to the acquiescence? It is the wealthy alone, that either by fortune, situation, education, intelligence, or influence, are qualified to take the lead in legislation: and the characteristic property of this tax, is to be favourable to the wealthy, and that in proportion to their wealth. Other taxes afford a man no indemnification for the wealth they take from him: this gives him power in exchange. The power of keeping down those who are to be kept down, the power of doing wrong, and the more generous pride of abstaining from the wrong which it is in our power to do; advantages such as these, are too precious not to be grasped at with avidity by human weakness: and, as in a country of political liberty, and under a system of justice in other respects impartial, they can only be obtained by a blind and indirect route such as this, the inconvenience of travelling in it, finds on the part of those who are well equipped for it, the more patient an acquiescence.

Will it be said that abolishing the taxes on justice would not answer the purpose, for that supposing them all abolished, justice would still remain inaccessible to the body of the people?—This would be to justify one abuse by another. The other obstacles by which the avenues to justice have been blocked up, constitute a separate head of abuse, from which I gladly turn aside, as being foreign to the present purpose. Take off law taxes altogether, the number of those to whom justice will still remain inaccessible, would still, it must be confessed, be but too great. It would however not be so great, as it is at present under the pressure of those taxes. Though you could not tell exactly to how many you would open the doors of justice, you might be sure you opened them to some. Though you would still leave the burthen but too heavy, you would at any rate make it proportionably more supportable.

If by taking off these taxes, you reduced the expense of a common action from £25 to £20, you might open the door, suppose, to one in five of those against whom it is shut at present. Even this would be something: at any rate whatever were the remaining quantum of abuse, which you still suffered to subsist, you would have the consolation at least of not being actively instrumental in producing it. To reform *in toto* a system of procedure is a work of time and difficulty, and would require a rare union of legal knowledge with genius:—repealing a tax may require discernment, candour, philanthropy, and fortitude, — but it is a work of no difficulty, requires no extraordinary measure of science, nor even so much time as the imposing of one.

But by whatever plea the continuance of the subsisting taxes of this kind may be apologized for, nothing can be said in favour of any new addition to the burthen. The subsisting ones, it may be said, have been acquiesced in, and men are used to them: in this respect at least they have the advantage of any new ones which could be substituted in the room of them. But even this immoral plea, which puts bad and good upon a level, effacing all distinction but that between *established* and not *established*, even this faint plea is mute against any augmentation of this worst of evils.

To conclude: either I am much mistaken, or it has been proved,— that a law tax is the worst of all taxes, actual or possible: — that for the most part it is a denial of justice, that at the best, it is a tax upon distress:—that it lays the burthen, not where there is most, but where there is least, benefit: — that it co-operates with every injury, and with every crime: — that the persons on whom it bears hardest, are those on whom a burthen of any kind lies heaviest, and that they compose the great majority of the people: — that so far from being a check, it is an encouragement to litigation: and that it operates in direct breach of Magna Charta, that venerable monument, commonly regarded as the foundation of English liberty.

The statesman who cares not what mischief he does, so he does it without disturbance, may lay on law-taxes without end: he who makes it a matter of conscience to abstain from mischief will abstain from adding to them: he whose ambition it is to extirpate mischief, will repeal them.*

* The duties on nearly every proceeding, at law or in equity were repealed by the 5 Geo. IV. c. 41. The duties which were left were those upon proceedings, which were generally used for and operated as conveyances. By the subsequent alterations in the laws relating to fines and recoveries, these latter duties have become extinct also. — *Ed.*

General error makes law, says a maxim in use among lawyers. It makes at any rate an apology for law: but when the error is pointed out, the apology is gone.

NOTES.

Mem. — Anno, 1796. At a dinner at Mr. Morton Pitt's, in Arlington Street, Mr. Rose, then secretary of the treasury, in the presence of Mr. William Pitt, (then minister) took me aside, and told me that they had read my pamphlet on Law-Taxes; that the reasons against them were unanswerable, and it was determined there should be no more of them.

Anno 1804, July 10, 12, 14, 18. — This being in the number of Mr. Addington's taxes, Mr. Pitt, upon returning to office, took up all those taxes in the lump. On the above days, this tax was opposed in the House of Commons: and Mr. Wyndham, according to the report in the *Times*, on one of those days, spoke of this pamphlet as containing complete information on the subject; observing at the same time, that it was out of print. On behalf of administration, nothing like an answer to any of the objections was attempted: only the Attorney-General (Percival) said, that the addition proposed to those taxes, was no more than equal to the depreciation of money.

Mr. Addington, before this, had recourse to the tax on medicine here spoken of, (page 575.) So that, in the course of his short administration, if the representation here given be correct, he had had the misfortune to find out and impose the two worst species of taxation possible. Compare this with Denmark, and its courts of *Natural Procedure*, called *Reconciliation Courts*.

26th February 1816.—Unalleviated by any adequate hope of use, too painful would be the task, of hunting out, and holding up to view, the subsequent additions, which this worst of oppressions has, in this interval of twenty years, been receiving.

Money, it is said, must be had, and no other taxes can be found. The justification being conclusive, the tax receives its increase: next year, from the same hand, flow others in abundance.

Grievous enough is the *income-tax*, called, lest it should be thought to be what it is, the *property-tax*. Grievous that tax is, whatever be its name; yet, sum for sum, compared with this tax, it is a blessing. Instead of 10 per cent. suppose it 80 per cent. Less bad would it be to add yet another 10 per cent. than a tax to an equal amount upon justice.

Grievous have been the additions, so lately and repeatedly made, to the taxes on *conveyances* and *agreements*. Extensive the prohibitory part of the effect, though the pressure,

confined as usual to the poor, *i. e.* the great majority of the community, who have none to speak for them, is scarcely complained of by the rich. Yet, were all law-taxes taken off, and the amount thrown upon *conveyances* and *agreements*, this — even this — would in reality be an indulgence.

Whether the oppression be more or less grievous, is never worth a thought. Will it be submitted to?—This is the only question. Charity is kicked out of doors. Hope is fled—faith and piety remain, and atone for everything.

For a list of about twenty-eight other sources of factitious delay, vexation, and expense, and thence of denial of justice, produced by the judges of former times, for the augmentation of lawyers' profit, their own included,—together with a list and summary account of the *devices* by which these burthens have been imposed, and by which *technical* stands distinguished from *natural procedure*, — See by the same author, *Scotch Reform*, &c. printed for Ridgway, Piccadilly. [Vol. V.]

ADDITION BY A LEARNED FRIEND.

In the Court of Chancery, two cases have recently occurred, which may serve as an illustration of the extent in which the taxes upon law-proceedings may operate as a denial of justice. In one case, Roe *v.* Gudgeon, the defendant, in his answer to the plaintiff's bill, submitted that he ought not to be compelled to set out certain accounts which had been required by the bill, as the expense of taking what is called an office copy of them,—a necessary preliminary to any further proceeding on the part of the plaintiff in the cause, — would amount to the sum of £29,000: an expense almost wholly arising from the stamps on the paper, on which the office copy of the answer is compulsorily made. In this case the court determined, that it was not necessary these accounts should be set out: but in coming to this conclusion, how far the court was determined by the nature of the particular case, or by the magnitude of the expense that would thus be occasioned;—or whether if, without any such objection, the defendant had actually set out these accounts, the plaintiff could have been relieved from pursuing the regular mode of procuring a copy of them, and thus incurring the above expense; — or whether, if the expense had been instead of £29,000, only 28 or 27 thousand pounds, such an objection would have been listened to; — it is extremely difficult to say.

The other case alluded to is one in which, from peculiar circumstances, it is not thought proper to mention the names of the parties. It is optional with a man to be a plaintiff in a cause, — it is not altogether so optional with him to be a defendant. The preceding case shows that it is not always safe for a man to become a plaintiff, without £28,000, at least in his pocket to begin with, over and above what is necessary for his maintenance.—The following case shows that a man may not be always able to resist a demand, however unjust it may be, without being able to support an outlay of at least £800. In the case in question, the writer of this has been assured, — and from authority, which he has peculiar reason for relying upon, — that the expense of merely putting in an answer by *one* of the defendants to a bill in equity, amounted to the above sum of £800: what part of this expense was occasioned by the tax on law-proceedings cannot be accurately ascertained, but it assuredly constituted a very considerable proportion of that sum.

SUPPLY WITHOUT BURDEN;

OR

ESCHEAT *VICE* TAXATION:

BEING

A PROPOSAL FOR A SAVING OF TAXES BY AN EXTENSION OF THE LAW OF ESCHEAT, INCLUDING STRICTURES ON THE TAXES ON COLLATERAL SUCCESSION COMPRISED IN THE BUDGET OF 7TH DECEMBER 1795.

(PRINTED IN 1793, AND FIRST PUBLISHED 1795.)

PREFACE.

Of the two essays laid before the public, that which presents a new resource was submitted to the proper authority in the month of September 1794, but was not fortunate enough to be deemed worth further notice. The arguments which it contains will speak for themselves; none were controverted, nor any hinted at on the other side; only as a matter of fact, it was observed, that it had not been customary of late for the *crown* to avail itself of the branch of prerogative here proposed to be cultivated for the *public* use.

Nobody can suppose that the minister would not gladly have availed himself of this, as of any other, source of supply, had it promised, in his conception, to conciliate the voice of the public in its favour. Nobody can suppose, that if the apprehensions that occurred in prospect should ever be dispelled by the event, the sense of the public would find him backward in conforming to it. It is natural that the difficulties attending a measure of considerable novelty and magnitude, should strike with a force proportioned to the responsibility of the situation to which the measure is presented. It is natural that they should strike with less than their proper force, on the imagination of him in whose conception it received its birth.

The idea had been honoured with the approbation of several gentlemen of eminence at the bar, some of them in Parliament, as many as had had the paper in their hands. If they were right in their wishes in its favour, it by no means follows, but those to whom it was submitted in their official capacities, did otherwise than right in declining to make use of it. Of all the qualifications required at the board to which it was presented, one of the most indispensable is *the science of the times;* a science, which though its title to the name of *science* were to be disputed, would not the less be acknowledged to be in the situation in question, "*fairly worth the seven.*" For that master-science none can have higher pretensions than the illustrious chief of that department, none less than the author of these pages.

Neither his expectations, nor so much as his wishes, in relation to this proposal, had extended so far as to its immediate adoption. It now lies with the public, who in due time will grant or refuse it their passport to the Treasury, and to parliament, according to its deserts.

The "*protest against law-taxes*" had better fortune: it received from the candour of the minister, on whose plans it hazarded a comment, all the attention that candour could bestow; and if I do not misrecollect, the taxes complained against did not afterwards appear.

The publication of it in this country was kept back, till the proposal for a substitute to the tax complained of should be brought into shape. Upon the principle of the parliamentary notion, which forbids the producing an objection to a tax without a proposal for a better on the back of it. The two essays seemed no unsuitable accompaniments to each other. Mutual light promised to be reflected by the contrast between the best of all possible resources and the worst.

SECTION I.

GENERAL IDEA.

In a former essay* I pointed out the species of tax which, if the reasoning there given be just, is the *worst* of all taxes existing or pos-

* Protest against Law-taxes, printed 1793, now first published and subjoined to the present Essay, December 1795. [See the immediately preceding Tract.]

sible. The object of the present essay is, to point out that mode of supply which, for one of so great a magnitude will, I flatter myself, appear to be absolutely the *best*.

What is that mode of supply, of which the twentieth part is a tax, and that a heavy one, while the whole would be no tax, and would not be felt by anybody?

The question has the air of a riddle; but the proposition it involves, paradoxical as it may appear, is not more strikingly paradoxical than strictly true.

The answer is, an extension of the existing *law of Escheat*—a law coeval with the very first elements of the constitution; to which I would add, as an aid to its operation, a correspondent *limitation*, not an *extension* of the power of *bequest*.

Of the extended law of escheat, according to the degree of extension here proposed, the effect would be, the appropriating to the use of the public all vacant successions, property of every denomination included, on the failure of near relations, will or no will, subject only to the power of bequest, as hereinafter limited.

By near relations, I mean, for the purpose of the present proposal, such relations as stand within the *degrees* termed *prohibited* with reference to marriage.

As a farther aid to the operation of the law, I would propose, in the instance of such relations *within the pale** as are not only childless, but *without prospect of children*,†—whatever share they would take under the existing law, that instead of taking that share in *ready money*, they should take only the interest of it, in the shape of *an annuity for life*.

It would be a farther help to the operation of the measure, and (if confined to the cases where, from the nature of the relationship, the survivor is not likely to have grounded his plans of life upon the expectation of the succession, or otherwise to have placed any determinate dependence on it) may scarcely, if at all, be felt, if in such instances, although the relationship be *within* the pale, the public were to come in for a share in the succession (suppose an *equal* share,) though not the whole. This may be applied to the case of the uncle and aunt—to the case of the grandfather and grandmother—and perhaps, unless under particular circumstances, to the case of the nephew and niece.

With regard to *family settlements*, the persons whose benefit they have in view will be found provided for, with few or perhaps no exceptions, by the reservations made in this plan in favour of relations *within the pale*.

To make provision for the cases where, in virtue of an old settlement, an estate might devolve to a relation without the *pale*, I would propose to add a proviso, that wherever the deceased, had he been of full age, could by his single act have cut off the entail, it shall be as if he had actually done so for the purpose of excluding the distant relative.

This, in the instance of settlements already *existing*; as to future ones, there will be still less difficulty about confining *their* operation within the range meant to be allowed them by the spirit of the proposed law.

Regard to the principles of the constitution, not less than to the probability of carrying the measure through the Upper House, would, at the sametime, incline me to exempt the peerage from its operation, wherever the effect would be to deprive the title of any property which, under the existing law, would go to the support of it.

As to the latitude to be left to the power of *bequest*, I should propose it to be continued in respect of the *half* of whatever property would be at present subject to that power: the wills of persons in whose succession no interest is hereby given to the public, to be observed in all points as at present; as likewise those in whose succession an interest *is* given to the public, saving as to the amount of that interest—the plan consequently not trenching in any degree upon the rights of parents.‡

* To save circumlocution, relations, whom under this, or any other definition of *near* relations, I should propose to exclude, I shall term relations *without the pale:* those whom I should propose *not* to exclude, relations *within* the pale.

† Say, in the instance of females, 48;—in the instance of males, 60, if no child within 5 years past; or 55, if married to a wife above 48.

‡ Many writers (Blackstone for one) have treated the right of bequest with very little ceremony: many writers, without having in view any such public benefit as is here in question, have been for abolishing it altogether [the author of the Code Frederic for instance; Cocceiji, chancellor to the late king of Prussia. See the preface to that work.] Without entering into a discussion which is not to the present purpose, it will be sufficient here to observe, that not only the regard due to old-established privileges, and long-existing usages, but the success of the very system here proposed, though established in so great a degree at the expense of the power in question, may depend upon the leaving that power in possession of a very considerable degree of force. If a man were allowed no power at all over what property he left behind him, he would, in many instances, either be indifferent about getting it, or spend it as fast as he got it, or transfer it to some happier clime, where the interests of the community were better understood, and the feelings of individuals treated with more respect; and, in fact, a great part of the value of all property would be thus destroyed.

So much as to the abolishing the power altogether: as to the narrowing it in the manner here proposed, should that be objected to as too great a hardship, let it be considered, that the defalcation thereby proposed to be made from the powers of proprietors in general, falls short by much more than half the quantum of restriction im-

To give the plan its due effect, it will be seen to be indispensably necessary, in the first place, that the whole property in which the public shall thus have acquired an interest, shall, whatever it consists of, be converted into *ready-money:* property in the funds alone excepted, from which the public cannot reap so great a benefit in any other way than by the sinking of so much of its debt in the first instance; in the next place, that to prevent collusive undervaluation, and the suspicion of it, the conversion shall in every instance be performed in the way of *public auction.* As to the reasons for such conversion, they are tolerably apparent on the face of the proposition; and they will be detailed in their proper place.

What will also be seen to be necessary is, that wherever the public has any interest at all in any succession under the proposed law, the officer of the public, *i. e.* the officer of the crown, shall enter into the possession and management of the whole in the first instance, in the same manner as assignees of bankrupts do in respect of the whole property, *real* and *personal* together, or administrators or executors do in respect of the personalty: not to mention the *real* in some cases, as where, by a clause in the will, it is ordered to be sold.

Of the several extensions above proposed, it may be observed, that though they operate, all of them, to the augmentation of the produce, and in so far at least to the *utility* of the measure, yet are they not any of them, so indispensably *necessary* to its adoption, but that they may be struck out or modified, or even added to by further extensions, and the principle of the plan still adopted—the essence of it still preserved.

It may be a satisfaction to see at this early stage of the inquiry the principles by which the *extent* that may with propriety be given to this resource appears to be marked out and limited. The propositions I would propose in that view are as follows: —

I. Whatever power an individual is, according to the received notions of *propriety*, understood to possess in this behalf, with respect to the disposal of his fortune in the way of *bequest*,— in other words, whatever degree of power he may exercise without being thought to have dealt *hardly* by those on whom what he disposes of would otherwise have devolved,— that same degree of power the law may, for the benefit of the public, exercise once for all, without being conceived to have dealt *hardly* by anybody, — without being conceived to have *hurt* anybody, — and, consequently, without scruple: and even though the money so raised would *not* otherwise have been to be raised in the way of taxes.*

II. Any further power which could be exercised in this way to the profit of the public purse, and of which the exercise, though not altogether clear of the imputation of producing a sense of hardship, would, at the same time, be productive of *less* hardship than the lightest tax that could be substituted in the soom of it, ought, if the public mind can be sufficiently reconciled to it, to be exercised in preference to the establishment of any tax.

III. A power thus exercised in favour of the public purse, would go beyond the latitude given by the first rule, and would accordingly be productive of a sense of hardship, in as far as it went the length of producing, in any degree, any of the following effects, viz.

1. If it extended to the prejudice of the joint-possession customarily enjoyed by a man's *natural* and necessary dependents, such as children, and those who stand in the place of children.

2. If it went to the bereaving a man of the faculty of continuing, after his death, any support he had been in the habit of affording to *relatives* of any other description, whose claims to, and dependence on such support,

posed by the terms of marriage settlements on the description of proprietors whose lot in point of property is most envied — the great body of the nobility and landed gentry. In this plan there is nothing to preclude a man from *charging* his estate — from *changing the nature* of it as often as he pleases — from improving any part by selling or charging another — or from *giving* or *spending* it in his lifetime.

* If without provocation on the part of my *children*, I were to let in strangers, or mere collateral relations, for an equal share of my fortune, my children would feel themselves injured, other people would look upon them as injured, my behaviour to them would be universally regarded as cruel or unnatural. A man is considered, indeed, as having his own fortune pretty much in his power, as against one child in comparison with another, but very little so as against his children taken together, in comparison with collaterals or strangers.

How stands it with regard to nephews and nieces? Is he considered as lying under the same restraint with regard to them? No, nor anything like it. If it be his pleasure to give them all, so he may, they being his nearest relations, and without being thought to do amiss by anybody else: but should it, on the other hand, be his pleasure to prefer to them a set of individual friends, or a public institution, say with respect to half, yet so as he does but leave them the other half, they will scarcely be looked upon as ill-used. Had he indeed exercised no such power at all over his property — had he suffered the law in this behalf to take its own course, they would, it is true, have got the whole. But why? only because somebody must have it, and as they stand nearest, there is nobody else to take it. I say nothing here of brothers and sisters, fathers and mothers, uncles and aunts, grandfathers and grandmothers, they would lead me too far into details.

are, by reason of the nearness of the relationship, too strongly rooted in nature and opinion, to be capable of being dissolved by the dispensations of law.

3. If, by putting it out of the power of a relation of parental age, to receive, at the death of a relation of inferior age, an adequate indemnification for requisite assistance, given in the way of *nurture*, it threatened, by lessening the inducements, to lessen the prevalence of so useful a branch of natural benevolence.

4. If it went to the bereaving a man of the faculty of affording an adequate *reward for meritorious service*, of whatsoever nature, and by whomsoever rendered, lessening thereby the general disposition among men to the rendering of such service.

5. The effect of such an extension of the proposed power would be purely mischievous, if what were gained thereby on one hand, by the augmentation of the share taken into the hands of government, at the expense of the power of bequest, were to be lost, on the other hand, by a proportionable diminution effected in the whole mass of property in the country, in consequence of the diminution of the inducements to accumulate and lay up property, instead of spending it.

6. The public mind must, in this instance, as in every other, be, at any rate, treated with due deference. In this instance, as in every other, a law, however good in itself, — however good, on the supposition of acquiescence, — may become bad, in any degree, by unpopularity: by running too suddenly and directly against opinions and affections that have got possession of mankind.

Thus much for the rules that may serve for our guidance in adjusting the extent that may be given to this resource. They may be trusted, it should seem, for the present, at least, to the strength of their own self-evidence. The application of them to practice, the application of them to the several modes and degrees of relationship, and to the several situations and exigencies of families, is matter of detail that will meet us in its proper place.

SECTION II.

ORDER OF THE DETAILS.

IN continuing the thread of this proposal, the following is the course I propose to take: —

1. To give a brief view of the *advantages* or beneficial properties that appear to recommend the measure to the adoption of government.

2. To show how *distinct* it is, in reality, from all taxes on *collateral successions*, which have ever been established or proposed, and how much the distinction is to its advantage.

3. To exhibit the best idea I am capable of giving of the probable amount of the *produce* that may be expected from it.

4. I shall add a few observations relative to the most eligible *application* to be made of that produce.

Descending further into detail,*

5. I shall give a more particular view of such *regulations* as may seem proper to be inserted for the purpose of applying to practice the principles already exhibited.

6. I shall attempt a sketch of an *official establishment* for the *collection* of the produce.

7. I shall consider the measure with reference to the cases where the interest of individuals belonging to nations altogether *foreign*, or nations *co-ordinate* with or *subordinate* to the British, are concerned.

8. I shall consider it with reference to the cases where the *property* in question happens to be *situated* anywhere *without* the limits of the laws of Great Britain.

9. I shall attempt a general sketch of a *plan* for the *collection* of the produce: in the course of which attempt, I shall have occasion to advert to the differences that may be suggested by the *nature* of the *property* which may come to be collected: to the means of guarding against *concealments* and other *frauds* to which the property in its several shapes may be exposed, on the part of such individuals, whose interest or affections may be at variance, in this behalf, with the interest of the public; as also against any such *abuses of power* and other *mismanagements*, as the servants employed on behalf of the public in this business, stand exposed, by their respective situations, to the temptation of being chargeable with.

In a sort of Appendix, which those who may find themselves already satisfied with the principle of the mode of supply, may spare themselves the trouble of looking into,

10. I shall defend the proposed institution against every *objection* which my imagination can represent to me as capable of presenting itself.†

11. I shall show that a latitude, much beyond what is here proposed to be assumed, stands warranted by the *opinions* of the most respected writers.

12. That it is equally warranted by *precedent*, that is, by the disposition of law in

* The matter belonging to the ensuing heads is not all of it included in the present publication. No part of it was sent, the demand for it depending upon the approval or disapproval of the principle of the measure; nor has it ever been thought worth while to work up into form any more than is here subjoined. — *Note added in December* 1795.

† Heads of objections, with answers, were sent, in form of a table, and being now printed *verbatim*, form the matter of one of the ensuing sections. — *Note added December* 1795.

this country from the primitive ages of the constitution down to the present times.

13. Lastly, in the way of supplement to the refutation of the several imaginable objections to the proposed measure, I shall endeavour to give a comprehensive idea of the several *effects*, as well immediate as remote, that appear any way likely to result from it, considered in every imaginable point of view.

SECTION III.

ADVANTAGES.

THE advantageous properties of the proposed resource may be stated under the following heads, viz. —

1. Its unburthensomeness.
2. Its tendency to cut off a great source of litigation.
3. Its favourableness to marriage.
4. Its probable popularity on that score.

Its *unburthensomeness*, which is the great and transcendent advantage, is not matter of surmise: it is testified by experience: it is confirmed, as we shall see, by the most indisputable principles of human nature — by the fundamental constitution of the human feelings.

1. It is testified by *experience*. On the decease of my uncle, who had children before I was born, the law gives everything to his children, nothing to me. What do I suffer from finding myself thus debarred? Just nothing — no more than at the thoughts of not succeeding to the stranger whose hearse is passing by.

What more should I suffer, if my uncle's property, instead of going to his children, were known beforehand to go to the public? In point of personal feeling, at least, nothing: sympathy for my cousins, in the case of their being left destitute, is a different concern.

Living under the law of England, I find myself debarred from a succession, in which I should have shared had I lived under the law of Spain. What do I suffer at hearing this? Just nothing: no more than I suffer at the thoughts of not being king of Spain. But if the law of England were to be changed in this behalf, in conformity to the measure proposed, what is now the existing law would be to me no more than the law of Spain.

My father gets an office: upon his decease, the office goes to the nominee of the king, from whom he got it, not to me. Do I regard the successor as an intruder? — do I feel his taking possession of the office as a hardship upon me? No more than I do his Majesty's having succeeded to the crown instead of me.

Under the *existing* law of escheat, real property, on the absolute failure of all heirs, lapses to the crown already. Is there anything of hardship felt by *any* body? If there were, it would be a cruel hardship, for it would be felt by *every* body.* Give to this branch of law the extent proposed, confining it always within the bounds above traced out, and it will be even then as unburthensome as it is now.

Thus stands the resource in point of unburthensomeness, as demonstrated by experience. What does so singular a property turn upon? Upon a most simple and indisputable principle in human nature — the feeling of *expectation*. In the case of acquiring or not acquiring — of retaining or not retaining — no hardship without previous expectation. *Disappointment* is expectation thwarted: in the distribution of property, no sense of hardship but in proportion to disappointment. But expectation, as far as the law can be kept present to men's minds, follows with undeviating obsequiousness the finger of the law. Why should I suffer (bodily distress from want out of the question) — why should I suffer, if the property I call *mine*, and have been used to regard as mine, were to be taken from me? For this reason, and no other: because I *expected* it to continue with me. If the law had predetermined that the property I am now using as mine, should, at the arrival of the present period, cease to be mine, and this determination of the law had been known to me before I began to treat it as mine, I should no longer have *expected* to be permitted to treat it as mine: the ceasing to possess it, the ceasing to treat it as mine, would be no *disappointment*, no hardship, no loss to me. Why is it that I do not suffer at the reflection that my neighbour enjoys his own property, and not I? Because I never *expected* to call it mine. In a word, in matters of property in general, and succession in particular, thus then stands the case: *hardship* depends upon *disappointment*; *disappointment* upon *expectation*; *expectation* upon the dispensations, meaning the *known* dispensations of the law.

The riddle begins to solve itself: a part taken, and a sense of burthen left; the whole taken, and no such effect produced: the effect of a part greater than the effect of a whole: the old Greek paradox verified, a part greater than the whole.† Suffer a mass of property in which a man has an interest to *get into his hands*, his expectation, his imagination, his at-

* I leave out of the supposition the case where there is a father left, a grandfather, or a relation of the half blood, and the estate escheats to their prejudice. These are but too real hardships; but they belong to the law in its present state, were ingrafted into it by accident, and would not continue in it in its proposed extended state if the choice depended upon me. Thus much must be acknowledged: the removal of them is a separate question, bearing no necessary relation to the present measure. [The law of England in this respect was altered by 3 and 4 W. IV. c. 106. — *Ed.*]

† —— πλειον ημισυ παντος.

tention at least, fastens upon the whole. Take from him afterwards a part; let it be such a part and no other, as at the time of his beginning to know that the whole was to come into his hands, he knew that he would have to quit: still, when the time comes for giving it up, the parting with it cannot but excite something of the sensation of a loss — a sensation which will of course be more or less pungent according to the tenacity of the individual. *Ah! why was not this mine too? Ah! why must I part with it? Is there no possible means of keeping it? Well, I will keep it as long as I can, however; and, perhaps, the chapter of accidents may serve me.* Take from him now (I should not say *take*,) but *keep* from him the whole; so keeping it from him that there shall never have been a time when he expected to receive it. All hardship, all suffering, is out of the case: if he *were* a sufferer, he would be a sufferer indeed; he would be a sufferer for every atom of property in the world possessed by anybody else; he would be as miserable as the world is wide.*

Under a tax on successions, a man is led, in the first place, to look upon the whole in a general view as his own: he is then called upon to give up a part. His share amounts to so much — this share he is to *have*; only out of it he is to *pay* so much *per cent.* His imagination thus begins with embracing the *whole*; his expectation fastens upon the whole: then comes the law putting in for its *part*, and forcing him to quit his hold. This he cannot do without pain: if he could, no tax at all, not even a tax on property, would be a burthen; neither land-tax nor poor's-rate could be too high.†

The utility of that part of the proposal which gives to the public officer possession of the whole, whether the public, in conclusion, is admitted to the whole, or only to a part, may now be seen in full force. It is a provision not more of *prudence* with a view to the public, than of *tenderness* with a view to the individual. Had he been suffered to *lay his hands* upon the *whole*, being afterwards or even at the time called upon to *give* up a *part*, his attention would unavoidably have grasped the whole: the giving up the part would have produced a sensation, fainter perhaps, but similar to that produced by an unexpected *loss*: on the other hand, as according to the proposal he *takes* nothing that he does not *keep*, no such unpleasant sensation is produced.

The case where the individual sees a share go from him for the benefit of the public, in the way of *partition*, stands in this respect between the case where the public is let into the whole, and that where a part is taken from him in the way of a *tax*. Whether, on this plan of partition, the individual shall feel in any degree the sensation of a loss, will depend partly upon the mode of *carving out* the share — partly upon the *proportion* taken by the law — partly after all upon the temper and disposition of the individual. As to the *mode of carving*, the whole secret lies in taking the public officer and not the individual for the *carver*, for the reasons that have been seen. As to the *proportion*, — to come back to the paradox, the larger the share of the public the better, even with reference to his feelings; for the larger it is, the more plainly it will show as a *civil* regulation in matters of succession: the smaller, the more palpably it will have the air of a *fiscal* imposition — the more it will feel, in short, like a *tax*. The more is taken under the name of a tax, the more burthensome the measure, as everybody knows: at the same time, the more is taken for the public under the name of *partition*, so long as an equal or not much more than equal share is left to the individual, the farther the measure from being burthensome, because the farther from being considered as a tax. The Roman tax of *five per cent.* on collateral successions was considered as a heavy burthen; a tax of *fifty per cent.* imposed under the name of a tax, would have been intolerable: at the same time, pass, instead of the tax, a law of inheritance, giving the public *fifty per cent.* upon certain successions, the burthen may be next to nothing: pass a law of inheritance, giving the public the whole, the burthen vanishes altogether. The dominion of the imagination upon the feelings is unbounded: the influence of names upon the imagination is well known. Things are submitted to without observation under one name, that would drive men mad under another. Justice is denied to the great bulk of

* *Better to have nothing than to have a share*, (says an objector.) *How can that be? Is not the man himself the best judge? Ask him, then, which is best for him — share or no share?* My answer is — the question does not meet the case. You suppose his attention previously drawn to the subject: — you have raised his expectation; you have given him his option between *some* and *none*: — that being the case, his answer, it is true, cannot but be as you suppose. Not to come in for anything, would now be a disappointment. It will even be a disappointment should the share he gets prove smaller than what he hoped to get; and the disappointment will be not less, but greater, if he gets no share at all. True; but all this depends upon the *option*: accordingly, in the case *you* suppose, there *is* an option given; whereas in the case *I* suppose, there is *none*. When an estate in England has been limited away from a man altogether, he never looks at it: — what should lead him? he has no more option in it than in the kingdom of Spain.

† Try the experiment upon a hungry child: give him a small cake, telling him, after he has got it, or even before, that he is to give back part of it. Another time, give him a whole cake, equal to what was left to him of the other, and no more, and let him enjoy it undiminished: — will there be a doubt which cake afforded him the purest pleasure?

the people by law-taxes, and the blind multitude suffer without a murmur. Were the distribution of justice to be prohibited in name, under a penalty to the amount of a tenth part of the tax, parliament would be blown into the air, or thrown into a mad-house.

Would it be better, then, upon the whole, for the public to take *all*, and let no relation in for a share? Certainly not in every case: the law is powerful here; but even *here*, the law is not absolutely omnipotent. It can govern *expectation* absolutely, meaning always in as far as it makes itself present to the mind: it can govern expectation absolutely; but governing expectation is not everything. It may prevent me from being *disappointed* at not having bread to eat; but if, by preventing my having bread to eat, it starves me, it will not prevent me from suffering by being starved. It can save me, in this way, from *ideal hardship*, but not from *corporal* sufferance. It can save me from disappointment at not *beginning* to enjoy, but it cannot save me from disappointment at not *continuing* to enjoy, after the habit of enjoyment has grown upon me. Hence the necessity of consulting the rules of precautionary tenderness that have been exhibited above.

Unburthensomeness is a praise that belongs to this mode of supply in another point of view: with reference to the business of *collection*. In many instances, so great is the incidental burthen accruing from this source, as almost to rival in real magnitude, and even eclipse in apparent magnitude, the principal burthen which is the more immediate fruit of the fiscal measure. This is more eminently the case in the instances of the *customs* and the *excise*— of those branches of taxation by which by far the largest portion of the revenue is supplied. The officer of excise goes nowhere where he is not a guest; and of all guests the most unwelcome. The escheator will have nowhere to go where he is not *at home* — into no habitation, into no edifice, not so much as upon a foot of land, which is not to this purpose — which is not, as against all *individuals*, his *own*. No jealousies — no collision of rights — no partial occupations extorted at the expense of the comfort and independence of proprietors. The excise is not only the most productive branch of the revenue, but the most capable of extension, and therefore the most liable to be extended. It can surely be no small merit in the proposed supply, in addition to its other merits, that in proportion as it extends, in the same proportion it puts a stop to the extensions of the excise.

2. The advantages that follow are of minor importance. The advantage of checking litigation in this way, by the diminution of its aliment, is, however, not to be despised. The fishing in the troubled waters of *litigation*, for the whole or a part of the property of a distant relation, or supposed relation, is one of the most alluring, and at the same time most dangerous pursuits, by which adventurers are enticed into the lottery of the law. It is like the search after a gold mine — a search by which the property of the adventurer is too often sunk before the precious ore is raised. Causes of this nature are by no means unfrequent in Westminster Hall; the famous *Selby* cause was a bequest nominally to relations, really to the profession. This source of litigation would be effectually dried up by the measure here proposed.

An item which may naturally enough be added to the account of advantage, is the favour shown to *marriage*, and in particular to *prolific marriages* — the sort of marriages of which the title to legislative favour stands in the most plausible point of view.

That the influence of the system in question would be favourable to marriage, and in particular to prolific marriage, will hardly be disputed. Of fathers and mothers of families, it leaves the powers untouched: — it places them, in comparison with single persons of both sexes, in a situation of privilege and pre-eminence. Within the threshold of him whose marriage has fulfilled the ends of marriage, the foot of the officer of the revenue has no place. His will is executed in all points; whatever he bequeathes—to whomsoever he bequeathes it — offspring, relation, or stranger — passes without deduction. Whatever restriction it imposes, is all at the expense of the celibatary and unmarried. If with propriety it could be styled a *tax*, it would be a *tax* on *celibacy*.*

An advantage of a less questionable nature is the popularity which seems the natural effect of any measure wearing the complexion above mentioned; for popularity, it must be confessed — popularity, how hollow soever be the ground it stands upon — can never be refused a place among the advantages of a measure. Satisfaction on the part of a people — satisfaction, so long as it subsists, is a real good —so long as it subsists, its title to that appellation is altogether independent of the source from which it flows. If, indeed, the utility of the measure be illusory, then, indeed, when the illusion is dispelled, there is an end of the advantage; but the advantage, so long as it continued, was not the less real. Happily, in the present instance, the advantage is not only *real*, but *pure*. Though in the way of afford-

* In my own estimation, the good that can be done by any encouragements of a *positive* nature given to marriage, shows itself, I must confess, in a very questionable point of view; but the reasons in support of this opinion not being to the present purpose, will be better spared than given. I say *positive;* for as to the negative kind of encouragement that, in the instance where any obstacles of a political nature can be shown to subsist, may be afforded by the removal of those obstacles, the utility of this species of encouragement stands upon a footing altogether different.

ing encouragement to marriage, the proposed measure should in truth be of little service, any farther than as it happened to be thought to be so, the pleasure of seeing it popular on this score may be indulged with the less reserve, as the delusion, if it be one, is not in this instance attended with any pernicious consequences.

SECTION IV.

ORIGINALITY.

If the proposal relative to this resource be not an *original* one, its want of originality may be seen to afford an objection. If not original, it has been *proposed;* and if it has been proposed, it has been *rejected,* for assuredly it has not been adopted anywhere.

A *tax on successions* might at first glance present itself as bearing a resemblance to the resource in question; as being a sort of modification of it — a commencement towards it — as forming in a manner a branch of it. But we have already seen how perfectly dissimilar, or rather opposite in effect, the *tax* is to the *regulation,* and how much the difference is to its disadvantage. A tax on successions lies as heavy on the individual as it falls light into the Exchequer.

Taxes on successions (not to mention the old Roman tax, the *vicesima hereditatum,* the *5 per cent.* on collateral successions) exist already in this country: they exist in the form of a stamp-duty, in some degree proportional, on probates and letters of administration; they exist in the form of a stamp duty on receipts for legacies and distributive shares. As to the duties on legacies, in what proportion they are *paid* I do not know; but I am sure they are *evaded,* and very frequently evaded. One should be almost sorry if they were *not* evaded: they are evaded in proportion as confidence prevails in families. The whole mass of property goes in the first place into the hands of individuals; a course which, indeed, it could not but take, so long as the resource is left to stand upon the footing of a tax. The private executor sets out with getting everything into his hands: the public gets what this most confidential friend of the deceased thinks proper to bestow; of course he will not bestow anything at the expense of the friend of his testator, so long as he can persuade himself with any tolerable assurance that the person he is befriending will not requite his generosity with such a degree of baseness as to make him pay the legacy over again out of his own pocket.

Another circumstance concurs in diminishing the productive power of a tax upon successions. When the duty amounts to a sum which appears considerable, the levy being a tax — a tax to be levied on an individual, and levied all at once, it wears so formidable an aspect, that the man of finance himself is startled at it: he accordingly reduces the rate, and the higher the legacy mounts, the more he reduces it; so that all proportionality is destroyed. By this means, the better a man can afford to pay, the less it is he pays; and the tax has the appearance of a conspiracy of the richer against the poorer classes of mankind.

Whence comes this? Only from its being raised by a *tax,* and not by a *regulation,* as above proposed. Under the regulation, the public will pay itself; the officer of the public will have the staff in his hands; a partiality as unfriendly to the interests of finance as it is unseemly in the eyes of justice, will disappear, and wealthy successions will yield in proportion to their opulence.*

SECTION V.

PRODUCE.

To Mr. ————

Instead of the matter destined for the present section, I must content myself for the present with sending you little more than a blank. I could not have filled it up without attempting to lead you into a labyrinth of calculations, which, after all, I could not render complete, for want of *data,* without your assistance, and which, if the *principle* of the measure should not be approved of, would have no claim to notice.

Meantime, as the result of the calculations need not wait for the calculations themselves, and as a supposition of this sort, however imperfectly warranted, may be more satisfactory than a total void, I will beg your indulgence for the following *apperçu.*

Net annual produce of this resource, upwards of £2,000,000 over and above the expense of collection: —

Expense of Collection.

Escheators and sub-escheators, at 5 per cent. upon the above produce, ...	£100,000
Judicial establishment for the purpose, at $2\frac{1}{2}$ per cent., which I apprehend could not be dispensed with, ...	50,000
Total, at $7\frac{1}{2}$ per cent.	£150,000

* The freshest and most considerable tax upon legacies and shares in successions (that of 29 Geo. III. c. 51, anno 1789,) has freed itself so far from this objection; but the duties on probates and letters of administration remain exposed to it; as do the anterior taxes on legacies and shares in successions imposed by 20 Geo. III. c. 28, anno 1780. The reason, in the instance of the duty on probates and letters of administration, seems to be, that in that stage the value of the subject can only be *guessed at,* whereas in the other cases it has been *liquidated.*

It is natural I should be over sanguine; but I must confess I should expect to find the above sum below the mark, rather than above it. The calculations in their present state point at three millions; but then there are deductions to be made on one hand, as well as additions on the other.*

For my own part, if it depended upon me, I should be very much disposed to turn my back upon calculations; for if the *principle* of the resource be but approved of, £200,000 a-year would be as sufficient a warrant for it as £2,000,000, since, whether much or little, it would be all so much clear gain, unfelt by anybody in the shape of a loss.

The calculations, however, such as they are, can be submitted at any time upon a day or two's notice. They will, at any rate, afford a view of the *data* the subject affords, of the difficulties to be overcome, and of the uncertainties which are not capable of being cleared up without the aid of parliament.

SECTION VI.

APPLICATION.

A WORD or two may not be amiss respecting the application of the produce. In general, this topic may seem foreign enough from the consideration of the supply itself; but that, as we shall see, is not altogether the case here.

In time of full peace, the floating debt provided for, there are but two options with regard to the application of a new supply: reduction of debt and extinction of taxes; for current service is already provided for by existing funds.

In time of war, there are two additional options: pledging for interest of loans, and application to current service.

I will begin with the case of war; for though the measure would be equally fit for establishment at either season, yet war is certainly that which holds out to it the most promising chance for being actually established. *Necessity*, the mother of *invention*, may then be the mother of *adoption* too, which of the two, is by much the hardest offspring to bring forth.

I should not wish, or even expect, to see the produce of this resource appropriated to current service; I should not wish, or even expect, to see it among the mass of pledges given as security for a loan. The novelty of its complexion, the uncertainty of its amount, both seem to preclude it from either destination: it may be prodigious, it may be nothing. there is no saying what it may be *taken* for. resources more according to the usual model, and therefore regarded as more certain — *taxes*, in a word, would be the supplies naturally destined to such service.

There remain, *discharge* of debt, and *extinction of taxes*. Between these two employments I would wish to see it divided, and perhaps pretty equally divided.

There is one portion that could not well be refused to the discharge of public debt — even in war-time — even under the pressure of any exigency: I mean the portion which exists already in that shape — where the property consists of a debt due from government, to be discharged by an annuity till paid off; in a word, property in government-annuities, or (as it is commonly termed, to the great confusion of ideas) *money in the funds*. The extinction of so much of the debt is here so natural a result, that it may be set down as an unavoidable one: — to keep the debt alive, and sell it for the benefit of government (just as, if it had fallen into individual hands, it might have been sold for the benefit of individuals,) will surely not be thought of.

Remit taxes? and that in war time? That would be an extraordinary employment for it indeed! Extraordinary, indeed, but not on that account the less eligible: novel blessings shine but the brighter for being new.

An opportunity would, by this incident, be presented, and perhaps this is the only incident by which such an opportunity could be presented, of shaking off the yoke of some of the most oppressive taxes. The whole list would then be to be overhauled, and the worst chosen, picked out, and expunged.†

Those which, to my conception, would stand at the head of the list, are, as I have said already, the taxes upon justice. In relation to these, I can speak with confidence, having sifted them to the bottom, and demonstrated them — or I know not what de-

* The documents resorted to as *data* for calculation, were the instances of *collateral* succession in different degrees, compared with those of *lineal* succession, as indicated by the publications on the peerage. The *data* thus obtained were digested into Tables, including Scotch and Irish, as well as English and British, existing as well as extinct.—*Note added Dec.* 9, 1795.

† *Fresh* taxes have, in many instances, been repealed upon fresh experience of their ineligibility or unpopularity; examples of the repeal of an *old-established* tax are rare indeed.

That of the *tax on coals borne coastwise* is an instance as honourable to those with whom the repeal originated as it is rare. As to the taxes not *taken off*, but *reduced*, on the institution of the commutation tax, the reduction was made, not because they were *ill-chosen*, for they were nothing less than ill-chosen, but because they had been strained so high as to become *unproductive*: it was made, not for *relief*, but for *revenue*.

monstration is — to be the worst of all taxes, actual or possible.

Further from the precise limits of the subject I will not attempt to stray; unless it be for a fantastic moment in the way of reverie. Pure as we have found the resource to be from *hardship*, and, in all human probability, from *odium*, how pregnant may we *imagine* it at least to be of *relief!* No law-taxes — no prohibition of justice. No tax on medical drugs — no prohibition of relief from sickness and from death. No window-tax — no prohibition of air, light, health, and cheerfulness. No soap-tax — no prohibition of cleanliness. No salt-tax — no prohibition of the only sustenance of a famished people.* Make the most of this resource, and, if not all these reliefs, at least the most essential of them, might, perhaps, be afforded, even under the pressure of the war. To do all this, and government never the poorer! To do all this, and have a rich surplus for the sinking fund! what a feast for humanity! what a harvest of popularity! what a rich reward for wisdom and virtue in a minister!

It is scarce necessary to observe, that neither in any of those ways, nor in any other, should specific relief be engaged for, till the means of relief are actually in hand. The produce should be taken for nothing, till it is actually in the Exchequer. When a year of probation is elapsed, the amount will, for any reason that can be alleged to the contrary, be as uniform as that of the steadiest tax.

SECTION VII.

HEADS OF OBJECTION, WITH ANSWERS.†

OBJECTION I. *Supposed tendency to promote dissipation of the national wealth*, by leading men to live upon their capitals, or sell them for annuities for their own lives, in consequence of their being restrained from benefiting those that are dear to them after their death.

Answer: No such tendency; for —

1. A man *will not* bar those that are *dear* to him, from receiving *any* part, only because there is *some* part that he *cannot* enable them to receive.

2. Nor *himself* from disposing in that manner of *any* part, only because there is *some* part that he can *not* so dispose of.

3. The power of benefiting others after death is not the sole motive to accumulation: another, and a still stronger and more universal one, is the faculty of increasing a man's fund of personal enjoyment during life — a faculty which would be at a stand, if he parted with his capital for an annuity.

4. Such dissipation, were it really to be, in here and there an instance, the result of the measure, would only be a *diminution*, and that a most trifling one, from the *benefit* of it — not any *objection* to the *principle* of it.

Objection II. Breach of faith in the instance of property in the funds.

Answer: Not unless *confined* to that species of property, which is not proposed, —

No more than the *existing* taxes on *distributive shares* and *legacies*, which, in as far as there is nothing else to pay them, must come out of any property a man had in the funds: no more than any tax on consumption, which must fall upon *stockholders* in common with other people; since, in as far as a man's own income arises out of the funds, every tax he pays is paid out of what he has in the funds.

Property is not in this way the *more* affected for being in the funds; since in any other shape it would be equally reached by the proposed regulation.

Objection III. *Breach of faith in the instance of foreign stockholders resident abroad*, who would not have been affected by the taxes in lieu of which this would come.

Answer: None; for they may sell out.

Reply: The sort of obligation they will thereby be laid under to sell out, is still a hardship; the more, as their submitting to it will lower the price.

Answer: Yes; were many likely to sell out on this account, but that is not in the case, —

1. Because much of such stock is in the hands of *bodies corporate*.

2. Among individuals, it is but a small proportion that will be destitute of relations *within the pale*.

3. Fewer still who would take to heart to such a degree a restriction from which a man's near relations stand exempted.

4. Feeling it to be in his power to sell out at *any* time, a man would neither sell out at *first* nor *afterwards*.

Objection IV. It is *pro tanto* very much exposed at least to evasion.

Answer: 1. To none but what may be pretty effectually guarded against by proper *registers*, &c.

2. If it could not, the objection applies, not to the *principle* of the measure, but only to the *quantum* of advantage.

3. It removes *pro tanto* the objection of *breach of faith*: so far as a man *evades*, so far he is *not hurt*.

Objection V. Tendency to sink the price of land by glutting the market with it.

Answer: 1. No reason for supposing it will tend to *sink* the price in one way, more than it will to *raise* it in another; for,

1. Income arising out of *land* being more generally eligible, will always fetch more than equal income arising out of the *funds* — still

* Fish to the Highlanders of Scotland.

† *To Mr.* ——. This is but an index: the objections and answers are given at large in the body of the paper.

more than equal income depending upon mere *personal* security.

II. Nothing, therefore, can sink the price of land, without sinking that and the price of stocks together; nor without sinking the price of stocks more than the price of land; nor raise the price of stocks without raising the price of land.

III. It will tend to *raise* the price of stocks at any rate, as to that part of the property it attaches upon, which it finds *already* in the shape of stock, and which it will of course extinguish and take out of the market. As also in respect of whatever other part is applied to the extinction of the public debt.

Admitted, that a depreciation in the price of property in land, in comparison with that of property in the funds, might take place, if land were as yet at a monopoly price, as Adam Smith seems to think it is. B. iii. c. 4.

But this does not seem to be the case, since a man can make *three per cent.* by laying out his money in land, when he can make but *three and a half per cent.* by laying it out in the funds; which is no more than an adequate difference for the difference in point of general eligibility between the two sources of income.

2. A fall in the price of land is considered not as an ineligible, but as an eligible event, by Adam Smith (B. iii. c. 4,) though not by me, who, referring everything to the feelings of individaals, regard the sensation of loss thus produced, as an evil outweighing every possible advantage.

Objection VI. Money thus obtained will be *collected* at greater *expense* than if obtained from taxes.

Answer: 1. No particular reason for thinking so.

2. Were this clear, it would afford no objection, because none of the *hardship* would be produced here, which is the result of expense when defrayed by taxes.

Objection VII. Increase of the influence of the crown by the new places that would be necessary.

Answer: 1. Not more from *this* mode of supply, than from any other of equal magnitude.

2. Were the objection anything determinate, the weight of it would bear, not against a *useful* establishment like this, but against *useless* or *less useful* places.

3. The objection, if it were worth while, might be got rid of in part, by giving the appointment of *escheators* to the *freeholders*, who now have the appointment of *coroners*.

Objection VIII. The powers that must be given for the purpose of collection would be abused.

Answer: 1. This mode of supply is not more open to abuse of power, to the *prejudice* of the individual, than any other.

2. Abuse of power by undue *indulgence* to the individual, to the prejudice of the revenue, goes only to the *quantum* of the advantage, and forms therefore no objection to the *principle* of the measure; and as to the individual, so far as he is *indulged*, duly or unduly, he is not *hurt*.

3. Abuses of both kinds may be more effectually checked in this instance than in others; viz. by the publicity that, even for other purposes, would require to be given to the proceedings.

The remark, though bad as an *objection*, is good as a *warning*, and as such would be attended to.

Objection IX. By the facility it would give to the business of supply, it would be an encouragement to *profusion* on the part of government.

Answer: If this were an objection, the most burdensome mode of supply would be the best.

Rendering supply more burthensome than it might be, is a remedy worse than the disease; or rather an aggravation of the disease, to the exclusion of the remedy.

The following are the suppositions which the objection must take for granted: — 1. That all expenditure is unnecessary; 2. That this mode of supply would be submitted to; 3. That no other would.

It would be a strange inconsistency if those who could not be brought to adopt other modes of checking profusion, could, in the mere view of checking profusion, be brought to reject this mode of supply.

Objection X. It would make a *revolution* in property.

Answer: The tendency of this objection, the force of which consists altogether in the abuse of a word, is to point to a wrong object the just horror conceived against the *French* revolution. The characteristic of *that* revolution is to trample in every possible way upon the feelings of individuals. The characteristic of *this* measure, is to show more tenderness to *those* feelings, than *can* be shown by the taxes to which it is proposed to substitute it.

Objection XI. The property of the nation would thus be *swallowed* up in the Exchequer.

Answer: No more than by taxes to the same amount.

Objection XII. It would be a *subversion* of the ancient law of inheritance in this country.

Answer: A *quiet* alteration, made by a mere *extension* given to the *old* law — to a branch more ancient than almost any of those at the expense of which it is extended. No *subversion*, except in as far as every *amendment* is a *subversion*.

Objection XIII. It would be an *innovation*.

Answer: No more than every *new* law; nor, as we have seen, so *much* as most new laws: no more than a set of taxes to the same amount.

Not so much; for all the revenue laws we have, are *innovations* in comparison with the law of *escheat.*

SECTION VIII.

EXISTING LAW.

CAN anything of *harshness* be imputed to the proposed measure? Not when viewed by itself, we have seen already. View it, then, in comparison: turn to existing law. No exclusion of the father *here* as *there* on pretence of the *ponderosity* of inheritances: no exclusion of the half-blood, as if the son of my father or my mother were a stranger to me: no exclusion of all children but the first born, as if the first born only lived upon food, and all others upon air: no exclusion of the better half of the species, as if the tender sex had no need of sustenance. The feelings of individuals — sole elements of public happiness — these, and these only, are the considerations that have *here* been exclusively consulted, and their suggestions undeviatingly adhered to; — human feelings, the only true standards of right and wrong in the business of legislation, not lawyers' quibbles, nor reasons of other times, that have vanished with the times.

Pursue the comparison yet farther: on the one hand, no harshness at all, as we have seen; on the other, a harshness which is incurable. The proposed law, taking nature for its guide, leads expectation by a silken string: the existing law, pursuing the ghosts of departed reasons, thwarts expectation at every step, and can never cease to do so. It does so, because it is in the *speechless* shape of *common* law; and it would do so still, even though *words* were given to it, and it were converted into statute law. Reasons rooted in utility, are so many anchors by which a law fastens itself into the memory: lawyers' quibbles are a rope of sand, which neither has tenacity of its own, nor can give stability to anything else. Rules and quibbles together, the impression they make upon the mind is that of the wind upon the waves; and when incidents spring up to call them into action, the sensation produced is the sensation of a thunder-stroke.

SECTION IX.

ANCIENT LAW.

SHALL we dig into antiquity? The result will be still more favourable. Reckoning from the subversion of the Roman empire, property, considered as surviving to the proprietor, is comparatively of modern date. Under the feudal system, in the morning of its days estates greater than life estates were unknown; the most fixed of all possessions fell back into the common stock upon the death of the possessor; and before the reign of the Conqueror was at an end, the feudal tree, transplanted from the continent into this our island, had covered almost the whole surface of the kingdom with its gloomy shade. This venerable system had, indeed, before that period, lost a good deal of its vigour, which is the same thing as to say its rigour; and the principle of succession had taken root under it, but not without being loaded with conditions, and weakened by defalcations and distortions, over and above those which have been already glanced at, and which we are plagued with to this day. The relaxation, too, was an innovation, which, in the vocabulary of antiquarian idolatry, as well as of indiscriminating timidity, means a corruption of the primeval state of things.

At a much later period, moveable property took, if not exactly the same course with immoveable, a course more opposite to that indicated by utility, and equally repugnant to that which seems prescribed by nature. The more substantial part — the immoveable — had been reserved for the maw of feudal anarchy: the lighter part — the moveable — was carried off by some holy personage for *pious uses;* and of all uses, the most pious was his own. Moveable and immoveable together, power without mercy, or imposture without shame, took the whole under their charge; the claims of the widow and the orphan were as little regarded as those of the most distant relative. So late even as the latter part of the reign of Edward III.* it required an exertion of parliamentary power to make the man of God disgorge, in favour of the fatherless and the widow.†

The right of bequest, the right of governing property by one who is no longer in existence to enjoy it, is an innovation still more modern. In its relation to moveables, it was conquered from the spiritual power by gradual and un-

* 31 Edward III. parl. 1, ch. ii. 9, co. 40, in Burn's Eccl. Law, iv. 197.

† Hume has fallen into a mistake on this subject, in supposing that in the reign of Henry II. moveables were the prey, not of the spiritual power but the temporal. "It appears," says he, vol. i. anno 1100, "from Glanville, the famous justiciary of Henry II., that in his time, where any man died intestate, an accident which must have been frequent when the art of writing was so little known, the king, or the lord of the fief, pretended to seize all the moveables, and to exclude every heir, even the children of the deceased, — a sure mark of a tyrannical and arbitrary government."

So far Hume, referring to Glanville, I. vi. c. 16. But what Hume understands of intestates in general, Glanville confines to bastards.

definable encroachments: the validity of its exercise having, from the conquest to the present time, depended on the decision of that same power, which, till the above-mentioned statute of Edward III. was interested in denying it: and after the right was secured, the facility of its exercise must for a long time have been confined within narrow bounds by the scarcity of literary acquirements. In its relation to immoveables, it was not placed on solid ground till the statute of Henry VIII., and then only by implication: nor (to take the matter in the words of Blackstone) was it "till even after the restoration, that the power of devising real property became so universal as at present."*

All this while, the law of escheat, coeval with the reign of the Conqueror, dwelt upon as a subject of importance in the reign of Henry II.,† touched upon by a numerous series of statutes reaching down as low as Edward VI., recognised by decisions of so recent a period as the late reign,‡ exists in indisputable vigour; although the facility of tracing out heirs in these times of universal and instantaneous communication, added to the want of an administrative establishment, adapted to the collection of such a branch of revenue, prevent it from being noticed in its present state in the account-book of finance.

SECTION X.

BLACKSTONE.

Is *opinion* worth resorting to? A poor warrant, after the *fiat* of utility written in characters so legible. In morals, in politics, in legislation, the *table of human feelings* is, I must confess, to me what the Alkoran was to the good Mussulman: opinions, if unconformable to it, are false — if conformable, useless. Not so to many a worthy mind: for their satisfaction, then, even this muddy source of argument shall not remain unexplored. Shall Blackstone, then, be our oracle? Blackstone, the most revered of oracles, though the latest? From him we have full licence—from him we have a latitude outstretching, and that even to extravagance, the utmost extent which either humanity or policy would permit us to assume. But let us hear him in his own words: —

Blackst. Comment. II. 12. "Wills, therefore," says he, "and testaments, rights of inheritance, and successions, are all of them creatures of the civil or municipal laws, and accordingly are in all respects regulated by them; every distinct country having different ceremonies and requisites to make a testament completely valid: neither does anything vary more than the right of inheritance under different national establishments. In England, particularly, this diversity is carried to such a length, *as if it had been meant to point out the power of the laws in regulating the succession to property, and how futile every claim must be, that has not its foundation in the positive rules of the state.*" — "In personal estates, the father may succeed to his children; in landed property, he can never be their immediate heir, by any the remotest possibility; in general, only the eldest son, in some places only the youngest, in others, all the sons together, have a right to succeed to the inheritance: in real estates, males are preferred to females, and the eldest male will usually exclude the rest: in the division of personal estates, the females of equal degree are admitted together with the males, and no right of primogeniture is allowed."

Thus far our Apollo. Legatees, we see, are nothing to him; he sacrifices parents to us, and even children; he sees not that children are not only *expectants*, but *co-occupants*.

No sympathy for disappointed expectation— no feeling for beggared opulence — no regard for meritorious service — no compassion for repulsive infirmity, obliged to forego assistance, or to borrow it of selfish hope. The law, his idol, has no bowels: why should we? The rights of legatees, the rights of children, are mere creatures of the law; as if the rights of occupants were anything more. Of wills, or even succession, he knows no use but to prevent a scramble.

The business of succession is a theatre which the laws of nations have pitched upon, as it were, in concert, for the exhibition of caprice; none with greater felicity than the law of England. She has her views in this, and they are always wise ones: — to insult the subject, to show him what arbitrary power is, and to teach him to respect it.

"This one consideration," continues he, "may help to remove the scruples of many *well-meaning* persons, who set up a *mistaken* conscience in opposition to the rules of law. If a man *disinherits his son* by a will duly executed, and leaves his estate to a stranger, there are many who consider this proceeding as *contrary to natural justice;* while others so scrupulously adhere to the supposed intention of the dead, that if a will of lands be attested by only *two* witnesses instead of *three*, which the law requires, they are apt to imagine that the heir is bound in conscience to relinquish his title to the devise. But both of them *certainly proceed upon very erroneous principles;* as if, on the one hand, the son had by *nature* a right to succeed to his father's lands; or as if, on the other hand, the owner was by nature entitled to direct the succession of his property after his decease. Whereas, the *law of nature* suggests, that on the death

* II. Comment. ch. i. † Glanville, I. vii. c. 17.
‡ [George II.] Atkyn's Reports.

of the possessor, the estate should again become common, and be open to the next occupant, unless otherwise ordered for the sake of civil peace by the positive law of society."

"The right of inheritance," says he but two pages before, "or descent to the children and relations of the deceased, seems to have been allowed much earlier than the right of devising by testament. We are apt to conceive at first view, that it has *nature* on its side,* yet we often *mistake* for *nature*, what we find established by long and inveterate *custom*."† It is certainly a wise and effectual, but clearly a political establishment,‡ since the *permanent* right of property,§ vested in the ancestor himself, was no *natural* but merely a *civil* right.‖

What we learn from all this is, that so long as a man can find a pretence for getting rid of the phrase, "*contrary to natural justice*," there is no harm in his children's being left by him to starve; and that those who would make a "*conscience*" of leaving their children thus to starve, are "*well-meaning*" but "*mistaken*" people. Quere, who is this same Queen "*Nature*," who makes such stuff under the name of laws? Quere, in what year of her own, or anybody else's reign, did she make it? and in what shop is a copy of it to be bought, that it may be burnt by the hands of the common hangman, and her majesty well disciplined at the cart's tail?

It being supposed, in point of *fact*, that the children have or have not a right of the sort in question given them by the *law*, the only rational question remaining is, whether, in point of *utility*, such a right *ought* to be given them or not? To talk of a *law of nature*, giving them or not giving them a *natural right*, is so much sheer nonsense, answering neither the one question nor the other.

---

* Quere, what is "nature?"

† Quere, the difference between "*nature*" here and "*custom*?"

‡ Quere, what "*establishments*" are there in the world besides *political* ones? Quere, what signifies whether a "*political establishment*" be a "*natural*" one or no, so long as it is a "*wise and effectual one*?"

§ If an "*impermanent*" right be a "*natural*" one, quere, at what o'clock does it cease to be so? If it be *natural* a right of property should *commence*, how comes it to be *unnatural* it should *continue*?

‖ Quere, what signifies whether it was a "*natural right*" or no. Quere, what sort of a thing is a "*natural right*," and where does the *maker* live, particularly in *Atheist's town*, where they are most rife?

TAX WITH MONOPOLY;

OR

HINTS OF CERTAIN CASES

IN WHICH,

IN ALLEVIATION OF THE BURDEN OF TAXATION, EXCLUSIVE PRIVILEGES MAY BE GIVEN AS AGAINST FUTURE COMPETITORS, WITHOUT PRODUCING ANY OF THE ILL EFFECTS, WHICH IN MOST CASES ARE INSEPARABLE FROM EVERYTHING THAT SAVOURS OF MONOPOLY;

EXEMPLIFIED IN THE INSTANCES OF THE

STOCK-BROKING AND BANKING BUSINESSES.

TAXES on the profits of traders would, generally speaking, be impracticable: —

1. The difficulty of ascertaining the profit and loss upon each article would be an endless source of evasion.

2. The measures necessary to be taken against evasion, would be an equally endless source of real or supposed oppression.

3. The disclosure of the secrets of the trade would operate as a prohibition of ingenuity and improvement.

I. STOCK-BROKERS.

In the business of a stock-broker, none of these objections have place: —

1. & 2. No difficulty about ascertaining profit and loss: loss, none in any case: rate of profit perfectly fixed: the transactions which gave birth to it are always upon record.

3. No secret, no inventions, no improvement in the case.

II. BANKERS.

1. 2. & 3. No more difficulty about ascertaining profit and loss, nor anything more of invention than in the case of stock-brokers.

The profit of the banker results from the placing out at interest, in large sums, what he finds to spare, out of the money he receives in large and small sums, on condition of returning it as it is wanted.

If in this case there be any such thing as a *secret*, the disclosure of which might be attended with prejudice to anybody, it lies in the money transactions of the *customers*, who deposit the money and draw for it, and of those who, by getting bills discounted or otherwise, deal with this shop in the character of borrowers. Were the knowledge of these transactions generally spread, or were it easily attainable, it might in some instances be attended with prejudice to the parties, by the information given to *rivals* in business, or other *adversaries*. But, for the purpose in question, the knowledge in question might be confined in each instance to a *single accountant* appointed by the crown, whose attention would be confined to the mere *figures*, having neither time to inquire, nor interest in inquiring, into the *history* of any transaction, in the occasion of which this or that sum was drawn for or deposited.

So much for the *tax* — the *burthen*. Now as to the *exclusive privilege* — the *compensation*. The effects to which this sort of institution, in as far as it is mischievous, stands indebted for its mischievousness, are —

1. Enhancement of the price of the article dealt in.

2. Impairing the quality.

3. Lessening consumption, in the case of consumable goods: — or more generally, diminishing the general mass of benefit depending upon this use of the sort of article, whatever it may be.

4. Enhancement of trouble to the customer, by his having farther to go than if dealers were more numerous.

5. [The exclusion of persons already embarked in the business, a still greater grievance, if it existed, is out of the question here.]

None of these ill effects would take place in any degree, in the instance of either of the above professions. Thus, in the case of

1. *The Stock Broker.*

1. The price of the service rendered is a fixed per centage; it is amply sufficient: enhancement might be prevented by law.

2. The quality of the service cannot, from

the nature of it, either be improved or impaired: neither skill nor invention, nor so much as any extraordinary degree of exertion, have anything to do with it.

3. The demand for this sort of service cannot in the nature of things, be lessened, or anyways affected, by the limitation of the number of the persons whose profession it is to render it, or by the fixation of the price at which they are to render it.

4. The distance between the agent and his employer cannot receive any enhancement from the exclusive privilege, or from anything else. The agents, how numerous soever, are confined to a spot by the very nature of their business.

II. *The Banker.*

1. The service of receiving and keeping—the service rendered to the *depositor* of money, is rendered *gratis*, and though the number of bankers should ever be lessened, there can be no apprehension of their requiring payment for this service.

The price at which the other sort of customer, the *borrower*, is supplied, is equally incapable of being raised by the operation; the rate of interest will depend upon the quantity of capital accumulated in the whole country, not upon the quantity that happens to be in the hands of bankers. A confederacy, and that a successful one, among all the bankers, town and country, to raise the rate of interest, is in itself scarce possible; besides that the rate is actually limited by law.

2. The *quality* of the service is as little susceptible of being *impaired* by such a cause: it is more likely to be improved: each bank being rendered richer, and thereby safer, in proportion as the number is kept down.

3. As little is the demand for this sort of service capable of being lessened by the restriction of the number of hands allowed to render it: the demand for the service, consisting in the *keeping* of money, will depend upon the quantity of money to be kept: the demand for the service consisting in the *loan* of money, will depend upon the quantity of money wanted for a time by those who have value to give for it when the time is over. In neither of these instances has the demand anything to do with the number of the persons whose business it is to render this sort of service.

4. The distance between the professional man and his customer and employer need not receive any enhancement in that case, any more than in the other. Distance has never been a matter much regarded in this branch of business. As to the *London* bankers, instead of *spreading* themselves equally within the circle of the metropolis, their object seems rather to have been to crowd *into*, or as *near* as possible to, Lombard Street.

In the country, whatever distance the depositor and borrower have been used to go, they might contrive to go, were it necessary, without *much* inconvenience. The inconvenience might be done away entirely by proper reservation, adapted to future demands in places where as yet there is none.

A calculation might easily be made of the progressive value of the indemnity, from a retrospective view of the gradual increase in the number of bankers on the one hand, and in the quantity of circulating cash and paper deposited on the other.

The advantages of monoply find their way without much difficulty to the eyes of dealers.*

Monopoly would be no innovation in this branch of business; an illustrious example is afforded by the bank of England.

Should the principle be approved of, it might be worth while to look over the list of trades, professions, and other lucrative occupations, for the purpose of ascertaining the instances in which this species of compensation might be given, without any such inconvenience as would outweigh the benefit.

The exclusive privilege being a benefit, ought of course to be coupled with the tax in every instance where it is not attended by a preponderant mass of inconvenience to the public at large.

The stock of these cases being exhausted, then, and not till then, may be the time to look out for the instances, if any, in which the tax might stand alone without the indemnity to lighten it.

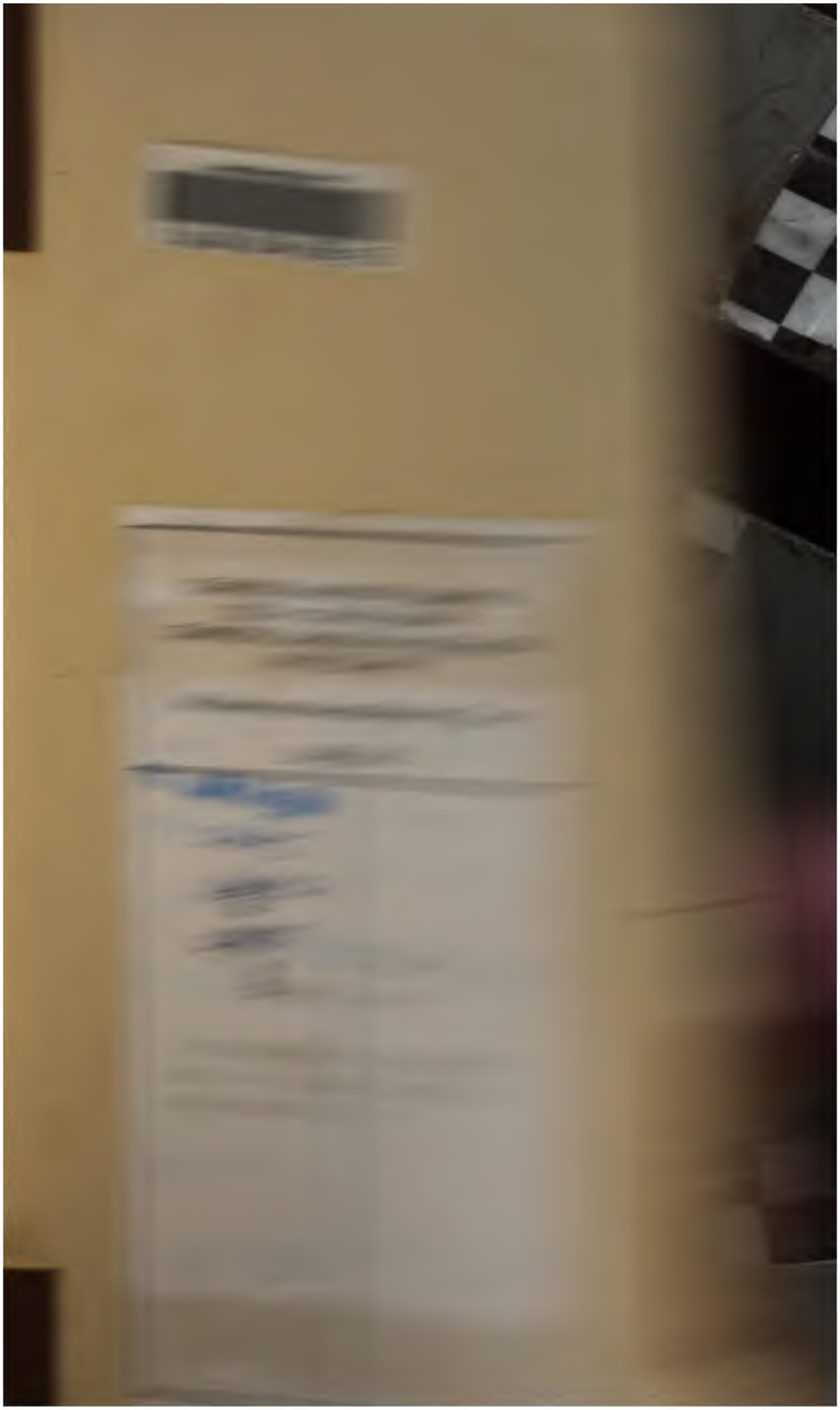
* Not long ago a great banking-house opened upon the plan of giving 3 per cent. for money on condition of its not being drawn out till after a short notice. This was too much, and so it proved: but an indication seems to be afforded that, even without the benefit of the monopoly, the profits of trade are capable of bearing a deduction in this instance.

END OF VOLUME II.

Stanford University Libraries
3 6105 004 898 453

STANFORD UNIVERSITY LIBRARIES
CECIL H. GREEN LIBRARY
STANFORD, CALIFORNIA 94305-6004
(415) 723-1493

All books may be recalled after 7 days

DATE DUE

F/S JUN 30 1994
6/30/95
6/30/96
6/30/97